

APPENDIX IV: RULE PART ANALYSIS

PART 1 – PRACTICE AND PROCEDURE

Description

Part 1 contains rules governing general practice and procedure before the Commission, including rules and procedures governing applications and licensing, rulemakings, complaints, hearings, and a variety of other Commission processes. Part 1 also contains miscellaneous rules implementing certain statutes other than the Communications Act that affect Commission processes, such as the National Environmental Policy Act, the Equal Access to Justice Act, and the Anti-Drug Abuse Act. Some of these rules apply generally to all entities that conduct business before the Commission, others apply to specific groups of licensees or other regulated entities, while others apply solely to the Commission and its staff.

Part 1 contains 19 subparts:

Subpart A – General Rules of Practice and Procedure – General rules for filing of pleadings with and appearances before the Commission; procedures for miscellaneous Commission proceedings, including forfeitures, license modifications, revocation or cease and desist proceedings, consent orders, reconsiderations (other than reconsiderations in rulemaking proceedings), and applications for review.

Subpart B – Hearing Proceedings – Procedural rules for hearing proceedings.

Subpart C – Rulemaking Proceedings – Procedural rules for rulemaking proceedings.

Subpart D – Broadcast Applications and Proceedings

Subpart E – Complaints, Applications, Tariffs, and Reports Involving Common Carriers – Procedural rules pertaining to filings by and complaints against common carriers.

Subpart F – Wireless Telecommunications Services Applications and Procedures – Application and licensing rules for wireless services.

Subpart G – Schedule of Statutory Charges and Procedures – Fee schedule for application and regulatory fees charged by the Commission, pursuant to sections 8 and 9 of the Communications Act.¹

Subpart H – Ex Parte Communications – Rules governing *ex parte* communications and presentations in Commission proceedings.

Subpart I – Procedures Implementing the National Environmental Policy Act of 1969 (NEPA)² – Application and licensing rules for FCC-licensed facilities that require environmental clearance under NEPA due to potential impact on environmentally sensitive areas.

Subpart J – Pole Attachment Complaint Procedures – Complaint procedures applicable to cable companies and telecommunications carriers that seek to obtain non-discriminatory access to utility poles, ducts, conduits, and rights-of-way on reasonable rates, terms, and conditions.

¹ 47 U.S.C. §§ 158, 159.

² 42 USC §§ 4321-4347.

Subpart K – Implementation of the Equal Access to Justice Act (EAJA) in Agency Proceedings³ – Rules and procedures for parties to Commission administrative proceedings who seek recovery of attorneys fees and expenses pursuant to the EAJA.

Subpart L – Random Selection Procedures for Mass Media Services – Rules and procedures for use of lotteries to award certain categories of broadcast licenses. [Not applicable to telecommunications carriers.]

Subpart N – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission – Rules implementing the Rehabilitation, Comprehensive Services, and Disabilities Amendments of 1978,⁴ which prohibits Executive agencies from discriminating against persons with disabilities in programs or activities conducted by the agency. [Not applicable to telecommunications carriers.]

Subpart O – Collection of Claims Owed the United States – Rules allowing the Commission to collect certain debts owed to the United States through administrative or salary offsets.

Subpart P – Implementation of the Anti-Drug Abuse Act of 1998⁵ – Rules requiring certain Commission applicants to certify that they are not subject to denial of Federal Benefits under section 5301 of the ADAA due to a conviction for possession or distribution of a controlled substance.

Subpart Q – Competitive Bidding Procedures – Rules governing the mechanisms and procedures for competitive bidding to award spectrum licenses.

Subpart R – Implementation of section 4(g)(3) of the Communications Act: Procedures Concerning Acceptance of Unconditional Gifts, Donations, and Bequests – Rules restricting acceptance of gifts by Commission employees. [Not applicable to telecommunications carriers.]

Subpart S – Preemption of Restrictions That “Impair” a Viewer’s Ability to Receive Television Broadcast Signals, Direct Broadcast Satellites, or Multi-Channel Multipoint Distribution Services – Rules preempting state and local regulation of antennas for reception of video programming via broadcast, satellite, or multipoint distribution services. [Not applicable to telecommunications carriers.]

Subpart T – Exempt Telecommunications Companies – Rules implementing provisions of the Telecommunications Act of 1996 by which a public utility holding company may obtain a determination from the Commission of status as an Exempt Telecommunications Company (ETC).

Purpose

The primary purpose of the Part 1 rules, particularly subparts A through L and subpart Q, is to establish fair and equitable rules of practice and procedure before the Commission for applicants, licensees, and other entities regulated by the Commission. Other subparts of Part 1 serve other purposes, such as compliance with external statutory mandates.

³ 5 U.S.C. § 504.

⁴ Pub. Law No. 95-602, 92 Stat 2955 (1978) (codified at 29 U.S.C. § 794).

⁵ 21 U.S.C. § 862.

Analysis

Advantages

The procedural rules in Part 1 provide uniform direction to applicants, licensees, and other entities in a wide variety of Commission proceedings. Consolidation of the Commission's procedural rules in Part 1 helps to ensure consistency in the Commission's processes across services, Bureaus, and offices.

Disadvantages

The Part 1 rules impose inherent administrative burdens on applicants, licensees, and other parties that practice before the Commission.

Recent Efforts

Certain portions of the Part 1 rules, such as the wireless licensing rules (subpart F), the *ex parte* rules (subpart H), and the Commission's competitive bidding rules (subpart Q) have been revamped in recent rulemaking proceedings.⁶ In addition, Part 1 was recently amended to allow parties to file comments and other pleadings electronically via the Internet in informal notice and comment rulemaking proceedings under section 553 of the Administrative Procedure Act.⁷ In that *Report and Order*, the rules were also amended to permit electronic filing of all pleadings and comments in proceedings involving petitions for rulemaking and Notice of Inquiry proceedings. Since that time, other Bureaus have amended Part 1 to include the electronic filing of applications.

Recommendation

The Part 1 rules are essential to the orderly conduct of business before the Commission. In addition, as noted above, key portions of Part 1 have been recently revamped. The staff therefore recommends no significant changes to the Part 1 rules at this time. However, as the Commission proceeds to implement new initiatives in the area of electronic filing, further amendment of the rules is envisioned. In addition, the staff intends to closely monitor the practical application of these rules, and will recommend appropriate rule changes in the future if the rules no longer best achieve their underlying purposes. [Note: Staff recommendations with respect to certain subparts of Part 1 are discussed in the sections below.]

⁶ See *Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*); *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, Report and Order*, 12 FCC Rcd 7348 (1997); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419) (rel. Mar. 2, 1998).

⁷ *In The Matter of Electronic Filing of Documents in Rulemaking Proceedings, Report and Order*, 13 FCC Rcd 11322 (1998).

**PART 1, SUBPART E – COMPLAINTS, APPLICATIONS, TARIFFS, AND REPORTS INVOLVING
COMMON CARRIERS – FORMAL COMPLAINTS**

Description

The rules governing formal complaints against common carriers implement section 208 of the Communications Act of 1934, as amended.⁸ Section 208 permits any person to lodge a complaint with the Commission against a common carrier alleging a violation of the Communications Act. In addition, Congress amended the Communications Act in 1996, among other things, to establish specific procedures and, in some cases, timeframes for complaints concerning certain new statutory provisions. See, for example, sections 260 (telemessaging), 271 (Bell operating company entry into long distance market), 274 (Bell operating company provision of electronic publishing service), 275 (Bell operating company provision of alarm monitoring service). The Commission's formal complaint rules implement these new statutory provisions.

Purpose.

These rules establish procedures for Commission receipt and review of formal complaints lodged against common carriers. The rules are designed to expedite the resolution of formal complaints while safeguarding the due process interests of the affected parties. In addition, the rules are intended to foster the pro-competitive, deregulatory goals of the Telecommunications Act of 1996 by providing for prompt and efficient enforcement of the statute and the Commission's substantive rules implementing the statute.

Analysis.

Status of Competition

Because section 208 permits complaints against a wide range of common carriers involving a host of obligations, it is not feasible to characterize the status of competition with respect to the variety of common carriers and markets subject to this statutory provision.

Advantages

The rules provide procedures to expedite resolution of disputes involving a common carrier. As noted in the Staff Report, the rules permit and encourage staff-sponsored mediation between the parties both before and after a formal complaint is filed at the Commission. These mediation efforts often result in quick and efficient resolution of disputes. Business solutions achieved by the parties through Commission-assisted mediation avoid the expense and delay that can accompany formal litigation before the agency.

The rules also require that a complaining party provide all factual support for its case in its initial pleadings. This, in turn, minimizes the need for time-consuming and resource-intensive discovery. In addition, the rules provide for the staff to convene an initial status conference with the parties shortly after the defendant files its answer. This presents an opportunity to simplify or narrow the issues, obtain admissions of fact or stipulations by the parties, settle some or all of the matters in controversy, and develop a schedule for the remainder of the case. This proactive case management tool helps ensure prompt and efficient case resolution.

⁸ 47 U.S.C. § 208.

Moreover, the rules provide an Accelerated Docket procedure that results in quicker formal decisions from the agency for certain formal complaints selected by the staff. Once a particular dispute is accepted by the staff onto the Accelerated Docket, the procedure is designed to lead to a written staff-level decision within 60 days from the filing of the complaint. Because this procedure may lead to a “mini-trial” with testimony by witnesses subject to cross-examination, it is particularly well suited for cases involving difficult factual issues. The Accelerated Docket rules require staff-supervised pre-filing settlement discussions between the parties. Thus, many disputes are settled without the need to file a formal complaint.

Disadvantages.

Formal litigation can be expensive and time-consuming. The rules attempt to minimize these liabilities by enhancing mediation and limiting discovery, while recognizing the due process interests of the affected parties. Nevertheless, section 208 creates a statutory process for persons to file complaints against common carriers and obligates the Commission to investigate those complaints, often within tight timeframes. Procedural rules are thus necessary to discharge this statutory directive.

Recent Efforts.

As noted in the Staff Report, the Commission revamped and streamlined these rules in 1997 and 1998 in light of the pro-competitive, deregulatory goals of the Telecommunications Act of 1996. The 1997 rule changes, in general, were designed to: (1) promote settlement efforts to enable parties to resolve disputes on their own; (2) improve the utility and content of pleadings; and (3) streamline the formal complaint process by eliminating or limiting procedural devices and pleading opportunities that contributed to undue delay. The 1998 rule changes created the Accelerated Docket. These specialized rules provide a framework for expeditious resolution of certain carrier-related complaints.

Recommendation.

The staff recommends no changes to the rules at this time because the rules were recently revamped and streamlined. However, the staff intends to closely monitor the practical application of all the rules governing formal complaints against common carriers. The staff will recommend appropriate rule changes in the future if the rules no longer achieve their underlying purposes, or if rule changes will better serve the public interest in light of competitive developments in the marketplace.

PART 1, SUBPART F – WIRELESS TELECOMMUNICATIONS SERVICES APPLICATIONS AND PROCEDURES

Description

Part 1, subpart F⁹ sets forth procedural rules governing the filing of applications and the issuance of wireless licenses. The rules cover all of the basic types of applications associated with wireless licensing, including initial applications, amendments and modifications, waiver requests, requests for special temporary authorization, assignment and transfer applications, and renewals. In addition, subpart F includes rules concerning public notices, petitions to deny, dismissal of applications, and termination of licenses.

The subpart F rules were adopted as part of the 1998 Biennial Regulatory Review in the *Universal Licensing* proceeding, WT Docket No. 98-20.¹⁰ The Commission initiated this proceeding in connection with the implementation of the Universal Licensing System (ULS), an integrated, automated system for electronic filing and processing of wireless applications. In the *Universal Licensing* proceeding, the Commission consolidated and streamlined its procedural rules into subpart F, which replaced numerous service-specific rules that had previously applied to different wireless services. In addition, the Commission adopted new standardized application forms designed for use in ULS, and adopted rules requiring all wireless telecommunications carriers, as well as certain other classes of wireless licensees, to file applications electronically.¹¹

Purpose

The purpose of subpart F is to: (1) establish uniform procedures for the licensing of all wireless services; (2) minimize filing requirements by eliminating redundant, inconsistent, or unnecessary submissions; and (3) ensure the collection of reliable information from applicants and licensees.

Analysis

Advantages

Consolidating the wireless procedural rules into a single subpart provides greater clarity, consistency, and predictability to the licensing process than the prior array of sometimes inconsistent service-specific rules, forms, and procedures. This lessens the filing burden on applicants, and also facilitates more rapid and efficient processing by the Commission.

Disadvantages

The requirement of electronic filing for all wireless telecommunications carriers imposes certain technical burdens and costs. In addition, the general procedural rules contained in subpart F impose administrative burdens on wireless applicants and licensees that are inherent to the licensing process.

⁹ 47 C.F.R. Part 1, subpart F.

¹⁰ *Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service*, 98-20, Report and Order, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*).

¹¹ 47 C.F.R. §1.913.

Recent Efforts

The Commission most recently reviewed the subpart F rules in its 1999 reconsideration of the *ULS Report and Order*, in which it made minor but not substantial changes to the rules.¹²

Recommendation

In light of the Commission's recent adoption and review on reconsideration of subpart F, the staff does not perceive the need for significant modification or revision of the rules. The staff recommends continuing to monitor developments as the Wireless Bureau completes its implementation of ULS for all wireless services, which is expected to occur by the end of the year.

¹² *Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999).

**PART 1, SUBPART I – PROCEDURES IMPLEMENTING THE NATIONAL ENVIRONMENTAL
POLICY ACT OF 1969**

Description

Subpart I of the Commission's rules¹³ implements the requirements of the National Environmental Policy Act (NEPA)¹⁴ as well as a series of other federal environmental laws, such as the Endangered Species Act of 1973, as amended,¹⁵ The National Historic Preservation Act of 1966,¹⁶ the Wilderness Act of 1964, as amended,¹⁷ laws relating to Indian Ceremonial Sites¹⁸ and the Wildlife Refuge Laws.¹⁹ In addition, the Commission's environmental rules implement Executive Orders regarding flood plains and wetlands regulation.²⁰ By statute and/or as set forth in the regulations of the Council on Environmental Quality (CEQ),²¹ the Commission is responsible for ensuring compliance with these laws. The rules, finally, identify certain special issues for consideration, including the impact of high-intensity white lights on towers in residential neighborhoods²² and the effect of radiofrequency emissions on the human environment.²³

Purpose

The purpose of the Commission's environmental rules is to identify those sensitive environmental issues which Commission licensees must address. As the primary Federal agency managing and licensing radio spectrum to broadcasters, wireless telephone carriers and other public and private radio users, the Commission complies with NEPA by requiring its licensees to assess and, if found, report the potential environmental consequences of their proposed projects.

If a federally-licensed facility, such as the construction of a tower by a licensee, might affect the environment in one of the ways described in the rules, the licensee, on behalf of the Commission, is required to consider the potential environmental effects from its project, to describe those potential effects in an environmental assessment (EA) and file that document with the Commission.²⁴ The Commission has concluded that actions not identified in its rules are

¹³ The Commission's environmental rules are codified at 47 C.F.R. §§ 1.1301-1.1319.

¹⁴ 42 USC § 4321-4347.

¹⁵ 16 USC § 1531-1543.

¹⁶ *Id.* § 470.

¹⁷ *Id.* § 1131-1136.

¹⁸ *Id.* § 470aa.

¹⁹ *Id.* § 668dd.

²⁰ *See* Executive Orders 11988 (floodplains) and 11990 (wetlands).

²¹ 40 C.F.R. § 1501-1508.

²² 47 C.F.R. § 1.1307(a)(8).

²³ *Id.* § 1.1307(b).

²⁴ *Id.* § 1.1307(a).

categorically excluded from environmental review.²⁵ The Commission's environmental rules then explain what information is required in an EA,²⁶ the methods for the public to file objections to EAs,²⁷ and those situations in which a full environmental impact statement must be completed,²⁸ as required by NEPA.

Analysis

Advantages

The Commission's environmental rules meet the Commission's obligation as a federal agency to consider the affect on the environment, as required by a number of statutes, of proposed facilities constructed by its licensees. The principal advantage of the Commission's environmental rules is that they streamline compliance with multiple environmental laws and focus environmental review activities to those that have a potential to significantly affect the environment. The rules rely on licensees to perform preliminary analyses to determine if there will be an environmental effect by contacting expert state and federal agencies. Only where there may be an environmental effect are licensees required to file environmental assessments with the Commission. Thus, a substantial number of facilities are categorically excluded from processing by the Commission because licensees have determined the proposed facilities will not affect the environment. In those cases where there may be an effect on the environment a detailed evaluation of the environmental effect is performed by the licensee, filed with the Commission, and approved prior to construction of the proposed facilities.

Disadvantages

The environmental laws as implemented by the Commission can create administrative burdens and delays in the implementation of federally-licensed projects. Moreover, the expert agencies contacted by licensees to determine if proposed projects will have an environmental effect are potentially overburdened with the number of requests from the Commission's licensees because of substantial facility construction. Because the Commission's rules are streamlined and rely on licensees to make the initial evaluation of environmental effect of proposed facilities, licensees sometimes construct facilities that have an adverse effect on the environment without obtaining approval from the Commission. In these cases, licensees generally construct without contacting expert agencies or adequately assessing the effect on the environment.

Recent Efforts

The Commission staff is currently conducting negotiations with the Advisory Council on Historic Preservation designed to develop a programmatic agreement to streamline compliance with historic preservation laws. Members of the staff have also attended various environmental seminars, workshops, and meetings to identify areas where the FCC has compliance obligations, to explain the Commission's rules, and to evaluate how the FCC's environmental obligations can be streamlined.

²⁵ *Id.* § 1.1306.

²⁶ *Id.* §§ 1.1308, 1.1311.

²⁷ *Id.* § 1.1313.

²⁸ *Id.* § 1.1314-1.1319.

Recommendation

In general, the staff recommends that the subpart I rules be retained because they are statutorily mandated and fulfill important public interest goals. The staff also recommends, however, that the rules be evaluated on an ongoing basis to determine whether they meet the Commission's environmental obligations and can be streamlined in order to minimize administrative cost and delay.

PART 1, SUBPART J - POLE ATTACHMENT COMPLAINT PROCEDURES

Description

Subpart J implements section 224 of the Communications Act of 1934, as added by Pub. Law No. 95-234, as amended. The Telecommunications Act of 1996²⁹ significantly amended section 224. Subpart J contains complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to a utility's poles, ducts, conduits and rights-of-way with rates, terms and conditions that are just and reasonable. It is applicable in States that have not certified to the Commission that they regulate pole attachments.

Purpose

The purpose of subpart J is to provide a simple and expeditious process for resolving complaints filed pursuant to section 224 of the Communications Act of 1934, as amended. Subpart J sets forth uniform definitions, procedures and requirements for an aggrieved party to seek redress for unjust and unreasonable rates, terms and conditions which act to impede deployment of facilities and equipment necessary to foster diverse communication capability throughout the nation.

Analysis

Status of Competition

The relevant market for purposes of pole attachment regulation is the existing local pool of poles, ducts, conduits and rights-of-way to which cable or telecommunications service providers, out of necessity or business convenience, must attach their distribution facilities. At the time of adoption of section 224, utilities enjoyed a superior bargaining position over attachers in negotiating the rates, terms and conditions for pole attachments due to the utilities' monopoly position in the ownership or control of these facilities.³⁰ That monopoly position has not changed since the passage of section 224, leaving open the possibility of anti-competitive practices by utilities against cable or competitive telecommunications providers in the absence of section 224.

Advantages

Subpart J provides a simple and expeditious complaint process and methodology to determine a maximum just and reasonable pole attachment rate a utility may charge an attaching telecommunications carrier or cable system operator. When a dispute arises, subpart J provides a mechanism for preventing unfair pole attachment practices, thereby minimizing the effect of unjust and unreasonable pole attachment practices on the deployment of cable television and telecommunications services to the public.³¹ Because subpart J provides a means for parties to predict an estimated rate a utility may charge by using an established set of formulas based on rebuttable presumptions and generally publicly available data that utilities report to their respective regulatory agencies, it promotes successful negotiation between parties and reduces the burden which might otherwise be associated with rate setting.

²⁹ Pub. Law No. 104-104, 104 Stat. 56, 149-151 (amending 47 U.S.C. § 224).

³⁰ See 1977 Senate Report, S. Rep. No. 580, 95th Cong., 1st Sess. 19, 20 (1977).

³¹ *Id.*

Disadvantages

Although cable system operators and telecommunications carriers must first attempt to negotiate rates, terms and conditions of attaching to a utility's poles, ducts, conduits and rights-of-way, in the event that negotiations are not successful, subpart J imposes certain transaction costs on the parties in order to successfully pursue and respond to the complaint driven rules. However, the process has been kept as simple and expeditious as possible to ensure that the burden on the parties is kept to a minimum.

Recent Efforts

In the Pole Fee Order³² the Commission refined and clarified the formula used to calculate the maximum just and reasonable rate a utility may charge a cable service or telecommunications service provider for attachments to a pole, duct, conduit or right-of-way prior to February 8, 2001, and continuing for cable operators not providing telecommunications services after February 8, 2001. Petitions for reconsideration and/or clarification of this order are pending. In the Telecommunications Carrier Report and Order,³³ the Commission adopted a separate methodology for attachments by telecommunications service providers, including cable systems providing telecommunications services, after February 8, 2001, as mandated by section 224. Petitions for reconsideration and/or clarification of this order are pending. In the Local Competition Order,³⁴ the Commission enumerated guidelines concerning the reasonableness of certain terms and conditions of access. These guidelines were later modified and refined in the Local Competition Reconsideration Order.³⁵

Recommendation

Subpart J is necessary to implement and enforce section 224 of the Communications Act. The complaint driven process encourages parties to negotiate and when applied, acts to prevent utilities from setting monopoly rates for infrastructure necessary to the competitive deployment of cable and telecommunications services. The necessity for these rules is increased by the influx of utilities entering the telecommunications field. In the last two years, the Commission has significantly revised and clarified subpart J in response to Congress' expansion and modification of section 224. The staff concludes that significant modification or repeal of the subpart J rules is not necessary at this time.

³² *In the Matter of Amendment of the Commission's Rules and Policies Governing Pole Attachments, Report and Order*, 15 FCC Rcd 6453 (2000).

³³ *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, Report and Order*, 13 FCC Rcd 6777 (1998); *rev. in part, Gulf Power, et al., v. FCC*, 208 F.3d 1263 (11th Cir., rel. Apr. 11, 2000). Petitions for rehearing *en banc* have been filed by the Commission and intervenors.

³⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996).

³⁵ *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration*, FCC 99-266 (rel. Oct. 26, 1999).

PART 1, SUBPART Q – COMPETITIVE BIDDING PROCEEDINGS

Description

Subpart Q implements section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993³⁶ and the Balanced Budget Act of 1997.³⁷ Subpart Q sets forth rules governing the mechanisms and procedures for competitive bidding to award spectrum licenses.

Purpose

The purpose of subpart Q is to establish a uniform set of competitive bidding rules and procedures for use in licensing of all services that are subject to licensing by auction. The rules in this subpart: (1) specify which services are eligible for competitive bidding; (2) provide competitive bidding mechanisms and design options; (3) establish application, disclosure and certification procedures for short- and long-form applications; (4) specify down payment, withdrawal and default mechanisms.

In addition, subpart Q contains rules that define eligibility for “designated entity” (*i.e.*, small business) status, and includes a schedule of bidding credits for which designated entities may qualify in those auctions in which special provisions are made for designated entities.³⁸ The purpose of these provisions is to implement section 309(j)(3)(B) of the Act, which states that an objective of designing and implementing the competitive bidding system is to “promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration on licenses and disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”³⁹

Analysis

Advantages

The subpart Q competitive bidding rules establish procedures for the efficient licensing of spectrum. Use of auction procedures allows for substantially faster licensing than alternative licensing methods such as comparative hearings, and is more likely to result in award of licenses to those entities that value the spectrum the most and will use it most efficiently. Auction rules also enable the Commission to recover a portion of the value of the spectrum for the benefit of the public.

Subpart Q is the result of the Commission’s consolidation of its auction rules in the Part 1 rulemaking proceeding (WT Docket No. 97-82). Prior to the Part 1 proceeding, the Commission

³⁶ See Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66 (1993).

³⁷ See Balanced Budget Act of 1997, Pub. Law No. 105-33, § 3002, 111 Stat. 251 (1997) (amending 47 U.S.C. § 309(j)).

³⁸ In service-specific rule making proceedings, the Commission continues to establish the appropriate size standards for each auctionable service.

³⁹ 47 U.S.C. § 309(j)(3)(B).

implemented service-specific auction rules for each new auctioned service. Consolidating the auction rules in Part 1 has resulted in more consistency and predictability in the auctions process from service to service.

Disadvantages

The auction rules in this subpart impose certain transaction costs on auction participants (aside from the obligation on the winning bidder to pay the amount bid). These include filing and reporting requirements, as well as the cost of maintaining staff and electronic resources to participate in auctions that may last several weeks or months. These auction-related costs may be somewhat higher than the cost of filing a lottery application. However, they also tend to discourage frivolous or speculative applications and are critical for ensuring the integrity of the auction process. In addition, certain aspects of the auctions process (*e.g.*, setting of minimum opening bid amounts, bid increments, and bidding credit levels) still require service-specific notice and comment prior to each individual auction. Nonetheless, the delays associated with this process are significantly less than those historically associated with licensing by lottery or hearing.

Recent Efforts

The Commission has made significant changes to the competitive bidding rules of subpart Q in recent years. The overall objectives of these competitive bidding rulemakings are: (1) consolidation of competitive bidding rules; and (2) the establishment of a uniform set of rules instead of a customized set of rules for each service. In the *Part 1 Third Report and Order*,⁴⁰ the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance the auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings.

Recommendation

In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in the auctionable services. In addition, the Commission has significantly revised and streamlined the competitive bidding rules in this subpart in several proceedings. Therefore, the staff concludes that significant modification or repeal of the subpart Q rules is not necessary at this time.

⁴⁰ See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998)).

PART 1, SUBPART T – EXEMPT TELECOMMUNICATIONS COMPANIES

Description

Sections 1.5000 through 1.5007⁴¹ implement provisions of the Telecommunications Act of 1996 by which a public utility holding company may obtain a determination from the Commission of status as an Exempt Telecommunications Company (ETC). By obtaining ETC status under these procedures, these firms become exempt from the “line of business” restrictions of the Public Utility Holding Company Act (PUHCA). Those restrictions, which are subject to regulation of the Securities and Exchange Commission, would otherwise preclude these firms from entering markets that are not related to the provision of public utility service.

Purpose

The purpose of these rules is thus to enable public utility holding companies to enter the telecommunications industry and thereby increase the number of possible entrants into this industry.

Analysis

The rules achieve the purpose in a very effective, streamlined way. Notably, under section 1.5004, if the Commission does not issue an order denying an ETC application within 60 days of receipt of the application, the application is deemed granted as a matter of law. Under section 1.5003, a person applying in good faith for a Commission determination of ETC status is deemed to be an ETC from the date of receipt of the application until the date of Commission action pursuant to section 1.5004. To implement these provisions, the Commission invites comments on each application under section 1.5007 and at the same time notifies the Securities and Exchange Commission under section 1.5005 that the Applicant is deemed to be an exempt telecommunications company. If the Commission receives comments warranting denial, it issues an order within 60 days of receipt of the application denying the application and notifies the SEC, but otherwise the Commission takes no further action to grant these applications.

Recommendation

Staff recommends that these rules be retained.

⁴¹ 47 C.F.R. §§ 1.5000-1.5007.

PART 2, SUBPART B – ALLOCATION, ASSIGNMENT, AND USE OF RADIO FREQUENCIES

Description

Section 303(c) of the Communications Act of 1934, as amended, gives the Commission authority to “assign bands of frequencies to the various classes of stations.” Part 2, subpart B implements this authority and contains the Table of Allocations which identifies the services allowed for various frequency bands. The Table of Allocations is strongly influenced by the International Telecommunications Union’s (ITU) Radio Regulations which contain an international allocation table and have the legal status of a treaty. The international allocations are noted for information purposes in the Table of Allocations.

Purpose

The Table of Allocations acts as a basic framework for the various service rules for each radio service. It also is the basic mechanism for coordinating with the National Telecommunications and Information Administration under section 305 of the Act to regulate stations operated by the federal government.

Analysis

Status of Competition

Not applicable: Part 2 subpart B does not regulate market entry or pricing.

Advantages

The Table of Allocations clearly sets out what radio services are permitted in each band and the primary or secondary status of each. As such users clearly can see what other classes of stations may enter their band or adjacent bands and what priority they have with respect to those uses.

Disadvantages

For some new radio technologies, a two-step process is needed to implement their use: first implementation of an allocation table change, and then adoption of service rules. We have addressed this problem at times in the past by combining the two steps in cases where speed was important and the issues were clear. Some types of new services also require changes in the ITU’s Radio Regulations, but this step is a treaty requirement beyond FCC’s control.

Recent Efforts

The allocation table is dynamic and is amended several times yearly to address new services and changes to existing services.

Recommendation

The staff recommends retaining the table in its current form and continuing the present procedure of incremental change as the need arises.

PART 3 – AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES.

Description

This rule part implements 47 U.S.C. 154(i), 154(j) and 303(r). Part 3 sets forth rules for authorizing, controlling and monitoring the issuance of accounting authority identification codes (AAIC). The rule places specific reporting requirements on authorized Accounting Authorities and addresses the Commission's enforcement policy. It also establishes rules, which monitor the business conduct of authorized Accounting Authorities.

At any given time, there are no more than 25 authorized accounting authorities with a minimum of 15 "US" AAICs reserved for use by the accounting authorities conducting settlement operations with the United States.

Accounting Authorities are responsible for settling accounts for public correspondence due to foreign administrations for messages transmitted at sea by or between maritime mobile stations located on board ships subject to U.S. registry and utilizing foreign coast and coast earth station facilities.

Purpose

These rules are intended to ensure that settlements of accounts for U.S. licensed ship radio stations are conducted in accordance with the International Telecommunications Regulations, taking into account the applicable ITU-T recommendations.

Analysis

Advantages

- Establishes and formalizes procedures for controlling the issuance of accounting authority identification codes.
- Establishes rules and guidance for administering accounting authority activities.
- Addresses ITU-T Recommendations
- Compliance with International Telecommunications Regulations.
- Implements specific reporting requirements
- Provides the opportunity for the Commission to privatize its own internal accounting authority activities.

Disadvantages

Administrative burden of monitoring the activities of private accounting authorities.

Recent Efforts

The International Bureau (IB) is currently drafting a *Further Notice of Proposed Rule Making (FNPRM)* which, among other things, considers privatizing the role currently performed by USO1. USO1 is the Commission's internal accounting authority. OMD's International Telecommunications Settlements Group administers the settlement activities for USO1. The group is located in Gettysburg, Pennsylvania. For years USO1 has handled all communications traffic, not otherwise contracted with one of the interim accounting authorities. With the implementation of Part 3 and the adoption of rules proposed in the pending *FNPRM*, the

Commission plans to get out of the business of settling maritime accounts. Focus would then be placed on administering and monitoring the activities of authorized accounting authorities.

Recommendation

Recommend the entire rule part stand as written, pending IB completion of its current rule making to privatize the Commission's internal accounting authority (USO1).

PART 15 RADIO FREQUENCY DEVICES

Description

Section 302 of the Communications Act of 1934, as amended, gives the Commission authority to regulate devices which may interfere with radio reception and requires the Commission to adopt regulations forbidding the sale of equipment capable in intercepting domestic cellular radio telecommunications service.

Purpose

The purpose of Part 15 is to provide technical guidance regarding radio devices, including prevention of interference, prohibitions on cellular transmission and reception interception, and requirements for television receivers and V chips.

Analysis

Status of Competition

The markets affected by Part 15 are competitive.

Advantages

The requirements of Part 15 are clear and competitively neutral.

Disadvantages

The requirements impose some regulatory costs on equipment in both having to be designed to comply and having to show compliance. The required approvals slow market entry slightly.

Recent Efforts

The Part 15 rules are continually revised to address evolving technology.

Recommendation

The staff recommends several specific changes to Part 15:

- Incorporate the new ANSI C63.4 test procedure for unlicensed PCS systems to remove certain present ambiguities
- Amend rules to establish conditions under which intentional transmitter modules can be authorized and then incorporated into larger units without addition equipment authorization.
- Review emission standards above 2 GHz to adjust in view of changes in licensed services at these frequencies.
- Amend 15.231 to permit data transmission by intermittent unlicensed transmitters permitted by this rule.

PART 17 – CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

Description

Part 17⁴² sets forth the procedures by which the Commission registers and assigns painting and lighting requirements to those antenna structures that may pose a physical hazard to aircraft. These procedures implement section 303(q) of the Communications Act of 1934, as amended.⁴³ The rules require registration, evaluation and approval by the Commission, in conjunction with the recommendations of the Federal Aviation Administration (FAA), of any proposed construction or modification of an antenna structure that is a potential hazard to aircraft. The rules also require tower owners to paint and light their antenna structures as necessary to protect air navigation.

The Antenna Structure Registration procedures set forth in Part 17 are distinct from the FCC's licensing functions. The registration of an antenna structure that affects air navigation is a pre-condition to FCC licensing of radio facilities at a particular site.

Purpose

The purpose of Part 17 is to insure that tower owners do not construct structures that may pose a hazard to air navigation (and FCC licensees do not site facilities on such structures) unless and until the antenna structures comply with federal aviation safety requirements.

Analysis

Advantages

The Part 17 rules implement section 303(q) of the Communications Act of 1934, as amended, and provide critical safety-of-life functions by insuring that antenna structures hosting FCC licensees are sufficiently conspicuous to aircraft. The rules are limited to those classes of antenna structures that may reasonably be expected to pose an air safety hazard (generally, antenna structures that are taller than 200 feet or that are in close proximity to airports) and, therefore, that must be individually examined in conjunction with the FAA. Antenna structure owners are responsible for compliance with the rules, which allows for a single point of contact for a particular antenna structure and which eliminate the need for each party on a multi-tenant structure to undertake the registration process.

Disadvantages

The Part 17 rules impose an additional regulatory cost on antenna structure owners. Because proposed facilities that meet the registration criteria must be studied by the FAA and registered by the Commission prior to construction, an owner who is unable to allocate sufficient time for this process risks delaying a licensee's ability to obtain an authorization for, and to begin service from, individual antenna structures.

⁴² 47 C.F.R. Part 17.

⁴³ 47 U.S.C. § 303(q).

Recent Efforts

The Commission's antenna structure registration program was substantially revised in 1995.⁴⁴ In a March 2000 *Memorandum Opinion and Order on Reconsideration*, the Commission reaffirmed the antenna structure registration procedures adopted in 1995, but clarified several rules.⁴⁵ In addition, the Commission has updated individual radio service rules during the course of rulemaking proceedings in order to cross-reference the Part 17 Rules.⁴⁶

Recommendation

In general, the rules in this part are critical to the safety-of-life duties required by the section 303(q) of the Communications Act of 1934, as amended. In addition, the Commission recently reaffirmed the antenna structure clearance process. Accordingly, the staff concludes that it is unnecessary to significantly restructure or repeal the Part 17 rules at this time. However, the staff has identified some rules that it believes could be modified or eliminated without compromising the public safety goals embodied in this rule part. These rules are either duplicative or inconsistent with the procedures antenna structure owners must undertake when notifying the FAA,⁴⁷ create unnecessary administrative burdens on antenna structure owners,⁴⁸ or are apt to confuse owners and licensees who attempt to comply with our Part 17 rules.⁴⁹

⁴⁴ *Streamlining the Commission's Antenna Structure Clearance Procedure, Report and Order*, 11 FCC Rcd 4272 (1995).

⁴⁵ *Streamlining the Commission's Antenna Structure Clearance Procedure, Memorandum Opinion and Order on Reconsideration*, FCC 00-76 (rel. Mar. 8, 2000).

⁴⁶ See, e.g., 47 C.F.R. § 1.923(d) (adopted in *Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order*, 13 FCC Rcd 21027 (1998)).

⁴⁷ 47 C.F.R. §§ 17.6(c) (duplicates procedures described in 17.4(e)); 17.23 (should reflect version 1K of the FAA advisory circular); 17.45 (because the applicable FAA advisory circular will specify the appropriate temporary warning lights, these provisions may be in conflict); 17.48 (telegraph notification is no longer acceptable); 17.53 and 17.54 (technical specifications duplicates those specifications incorporated by reference to the FAA advisory circulars).

⁴⁸ 47 C.F.R. §§ 17.4(b), (d) (submission of paper copy of FAA study no longer necessary); 17.57 (notification is now made via FCC Form 854); 17.58 (Commission previously determined that there is no longer a basis for this reporting requirement).

⁴⁹ 47 C.F.R. §§ 17.24-43, associated section headings and notes (there is no need to retain these reserved sections and headings); 17.4(g) and 17.49 (posting and logging requirements have caused confusion); 17.22 (should say that specified painting and lighting will be printed on the registration document); 17.56 ("as soon as practical" time frame is too indefinite); and 17.57 (specify which "owner" should file in a change of ownership situation).

**PART 20 – COMMERCIAL MOBILE RADIO SERVICES, SECTION 20.6 – CMRS SPECTRUM
AGGREGATION LIMIT**

Description

Section 20.6⁵⁰ limits the amount of broadband PCS, cellular, and SMR spectrum that any entity can hold in a common geographic area. The rule further defines the types of ownership and other interests that are attributable under the cap. The cap was adopted in 1994,⁵¹ and modified in 1999 (see discussion below).⁵²

Purpose

The purpose of section 20.6 is to promote competition in the broadband CMRS market by preventing any wireless carrier from gaining undue market power or restricting entry through the accumulation of CMRS spectrum.

Analysis

Advantages

The spectrum cap minimizes potential for anti-competitive behavior by avoiding excessive concentration of licenses, and ensures that licenses are distributed among a wide variety of applicants. By applying a bright-line test to spectrum aggregation, the rule also reduces transaction costs associated with case-by-case review of such transactions.

Disadvantages

By restricting aggregation of spectrum, the spectrum cap may limit economies of scale or scope that could otherwise be achieved by carriers subject to the cap. The rule also potentially limits carriers' ability to provide new services to the extent such services require more spectrum resources than the cap allows.

⁵⁰ 47 C.F.R. § 20.6.

⁵¹ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, Third Report and Order*, 9 FCC Rcd 7988, 7992 (1994).

⁵² *1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Cellular Telecommunications Industry Association's Petition for Forbearance From the 45 MHz CMRS Spectrum Cap, Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and Commercial Mobile Radio Service Spectrum Cap, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Report and Order*, 15 FCC Rcd 9219 (1999).

Recent Efforts

On September 15, 1999, the Commission adopted a *Report and Order* that retained the spectrum cap, with some modifications.⁵³ The Commission maintained the original 45 MHz cap for most areas, but increased the cap to 55 MHz for rural areas. In addition, the Commission adopted a separate benchmark for the spectrum cap of 40 percent equity ownership by passive institutional investors. The Commission also established a waiver mechanism for carriers who can demonstrate that strict application of the cap will impair their ability to provide 3G or other innovative services. The Commission stated in the *Report and Order* that while it was retaining the cap, it would further consider in the 2000 Biennial Regulatory Review whether the cap should be retained, repealed, or modified.⁵⁴

Several carriers filed petitions for waiver or forbearance with respect to application of the spectrum cap to the upcoming C and F Block auction scheduled for November 2000. On August 29, 2000, the Commission issued the *Sixth Report and Order and Order on Reconsideration* in WT Docket No. 97-82, which held that the spectrum cap would apply to the C and F Block auction.⁵⁵

Recommendation

As noted above, the Commission has stated that the spectrum cap will be reviewed as part of the 2000 Biennial Regulatory Review. The staff plans to prepare a Notice of Proposed Rulemaking for Commission consideration later this year.

⁵³ *Id.*

⁵⁴ *Id.* at 25-26.

⁵⁵ *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Sixth Report and Order and Order on Reconsideration*, FCC 00-313 (rel. Aug. 29, 2000).

PART 20, SECTION 20.11 - INTERCONNECTION TO FACILITIES OF LOCAL EXCHANGE CARRIERS

Description

Section 20.11⁵⁶ provides that local exchange carriers (LECs) must provide reasonable interconnection to commercial mobile radio service (CMRS) providers on request, and that LECs and CMRS providers must each reasonably compensate the other for terminating traffic that originates on their respective facilities. This rule codifies section 332(c)(1)(B) of the Act,⁵⁷ which was enacted by Congress as part of the Omnibus Budget Reconciliation Act of 1993.⁵⁸ Section 20.11 was adopted in 1994 in the *CMRS Second Report and Order* in GN Docket No. 93-252.⁵⁹

In the Telecommunications Act of 1996, Congress added sections 251 and 252 to the Communications Act. These statutory provisions establish interconnection rights among all telecommunications carriers, and set forth terms and conditions under which interconnection must be provided by one carrier to another.⁶⁰ While enacting sections 251 and 252, Congress also left section 332(c)(1)(B) of the Act intact. In the 1996 *First Local Competition Order*, the Commission codified new interconnection rules in Part 51 as part of its implementation of sections 251 and 252.⁶¹ The Commission also concluded that in light of Congress' retention of section 332(c)(1)(B), the Commission retained separate authority over LEC-CMRS interconnection pursuant to that section.⁶² Because the Commission viewed sections 251, 252, and 332 of the Act as furthering a common goal with respect to interconnection, the Commission declined at that point to further act on or define the scope of its section 332 interconnection authority, but instead amended section 20.11 to require that LECs and CMRS providers comply with the interconnection rules in Part 51.⁶³

Section 20.11 is organized into three lettered sub-parts: Subsection (a) requires LECs to provide the type of interconnection requested by mobile radio service providers, within reason. Subsection (b) requires LECs and CMRS providers to reasonably compensate each other for terminating traffic that originates on each other's facilities. Subsection (c) requires LECs and CMRS providers to comply with the Part 51 interconnection rules.

⁵⁶ 47 C.F.R. § 20.11.

⁵⁷ 47 U.S.C. § 332(c)(1)(B).

⁵⁸ See 47 U.S.C. § 332.

⁵⁹ See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (*Second Report and Order*).

⁶⁰ See 47 U.S.C. §§ 251, 252.

⁶¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-68, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 16195 (1996) (*Local Competition First Report and Order*).

⁶² *Local Competition First Report and Order* at ¶ 1023.

⁶³ 47 C.F.R. § 20.11(c). See also *Local Competition First Report and Order* at 16195.

Purpose

The purpose of the LEC-CMRS interconnection rule is to promote competition in the telecommunications market by ensuring that all LECs and CMRS providers provide reasonable interconnection to one another subject to reasonable rates, terms, and conditions. The rule is particularly directed to regulating the conduct of LECs with market power in their interconnection relationships with CMRS providers. Historically, some LECs denied or restricted interconnection options available to CMRS providers, or required CMRS providers to compensate the LEC for LEC-originated traffic that terminated on the CMRS provider's network. Congress enacted section 332(c)(1)(B), and the Commission adopted section 20.11 codifying this provision, in order to curtail such practices.

Analysis

Advantages

Section 20.11 sets forth basic requirements for reasonable and nondiscriminatory interconnection arrangements between LECs and CMRS providers, but does not impose detailed standards or technical requirements. Thus, it reduces the potential for anti-competitive behavior, while affording carriers reasonable flexibility with respect to the terms and conditions of interconnection so long as the basic requirements of the rule are adhered to.

Disadvantages

Section 20.11 imposes certain transaction costs on carriers to ensure that their interconnection arrangements comply with the rule, and may lead to disputes and litigation between carriers about what constitutes "reasonable" interconnection under the rule. In addition, the overlap between this rule and the Part 51 interconnection rules may cause some duplication of regulatory requirements.

Recent Efforts

Since the addition of subsection (c) in 1996, section 20.11 has not been revised. In February 2000, Sprint PCS filed an analysis of CMRS traffic-sensitive costs of terminating local calls originating on LECs' networks, and requested the Commission to consider rules that would mandate recovery of such costs.⁶⁴ The Commission has sought comment on Sprint's filing.⁶⁵ The issue is still pending review.

Although section 20.11 has not been judicially challenged, the related Part 51 rules continue to be the subject of litigation. On July 18, 2000, on remand from the Supreme Court, the Eighth Circuit vacated portions of the FCC's forward-looking pricing methodology, proxy prices, and wholesale pricing provisions.⁶⁶ To the extent that section 20.11 requires compliance with Part 51, this litigation affects carriers' obligations under both sets of rules.

⁶⁴ Letter from Sprint Spectrum L.P., d/b/a Sprint PCS, to Thomas J. Sugrue, (filed Feb. 2, 2000).

⁶⁵ See *Comment Sought on Reciprocal Compensation for CMRS Providers*, Public Notice, CC Docket Nos. 96-98, 95-185, and WT Docket No. 97-207 (rel. May 11, 2000).

⁶⁶ See *Iowa Utilities Board v. F.C.C.*, (8th Cir. July 18, 2000).

Recommendation

The staff recommends retaining section 20.11. Although there is some overlap with the interconnection requirements of Part 51, retention of the rule is appropriate in light of the fact that Congress has retained the separate statutory provision in section 332 governing LEC-CMRS interconnection.

PART 20, SECTION 20.12 – RESALE AND ROAMING

[Note: Section 20.12 addresses two distinct issues: resale and roaming. This analysis deals with each separately.]

RESALE

Description

Section 20.12(b)⁶⁷ provides that any carrier of Broadband PCS, Cellular Radio Telephone Service, or Specialized Mobile Radio (SMR) Services that offers real-time, two-way interconnected voice service with switching capability (“covered CMRS provider”) must permit unrestricted resale of its services. The resale rule was adopted in 1996 in the *First Report and Order* in CC Docket No. 94-54.⁶⁸

Section 20.12(b) further provides that the resale provision will cease to be effective five years after the date of the award of the last group of initial licenses for broadband PCS. The Commission has since determined the last PCS award date for purposes of this rule was November 25, 1997. Therefore, the resale rule is set to expire on November 24, 2002.⁶⁹ However, resale arrangements will continue to be subject to the non-discrimination and reasonableness requirements of sections 201 and 202 of the Communications Act⁷⁰ after that date.

Purpose

The purpose of the resale rule is to promote competition in the wireless telephony market by preventing facilities-based covered CMRS carriers from restricting resale of their services. The rule is particularly directed to promoting competition during the period that broadband PCS providers are building out their facilities-based networks to compete with incumbent cellular carriers. The Commission has concluded that by November 2002, PCS buildout should be sufficient to obviate the need for the rule.⁷¹

Analysis

Status of Competition

As described in the *Fifth Competition Report*, the broadband PCS sector has engaged in significant buildout in recent years.⁷² However, broadband PCS has not yet achieved full parity

⁶⁷ 47 C.F.R. § 20.12(b).

⁶⁸ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order*, 11 FCC Rcd 18455 (1996) (*CMRS Resale Order*).

⁶⁹ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 16340 (1999) (*CMRS Resale Reconsideration Order*).

⁷⁰ 47 U.S.C. §§ 201, 202.

⁷¹ *Id.*

⁷² *Fifth Competition Report*, *supra*, at 28-29.

with cellular as a facilities-based competitor. The *Fifth Competition Report* also notes that PCS providers have yet to achieve the same level of geographic coverage or subscribership as cellular, particularly in smaller markets.⁷³

Advantages

The resale rule provides a “bright-line” test that minimizes potential for anti-competitive behavior. By prohibiting CMRS carriers from any restrictions on resale, the rule ensures no carrier may offer like communications services to a reseller at less favorable prices, or on less favorable terms or conditions, than are available to similarly situated customers.

Disadvantages

The resale rule imposes administrative costs on facilities-based carriers associated with negotiating and entering into resale agreements, resolving disputes with resellers, and litigation of compliance issues. The rule also may impose technical costs associated with accommodating resellers on facilities-based networks and billing of resale service.

Recent Efforts

In response to petitions for reconsideration of the *CMRS Resale Order*, the Commission recently conducted a comprehensive review of the resale rule. In the *CMRS Resale Reconsideration Order*, adopted on September 15, 1999, the Commission rejected arguments that the rule should be repealed immediately, and determined that retaining the rule (with minor modifications) until the November 2002 sunset date would best promote competition and balance the costs and benefits of the rule.⁷⁴

Recommendation

In light of the Commission’s recent comprehensive review of the resale rule, discussed above, the staff finds no need to make further recommendations at this time. The staff recommends that the Commission continue to evaluate the resale rule in light of competitive conditions in the CMRS market sector.

ROAMING

Description

Roaming occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call. Roaming can be done “manually,” in which a subscriber establishes a relationship with the host carrier usually by providing a credit card number, or “automatically,” in which the subscriber does nothing more than turning on her telephone. Automatic roaming requires a contractual agreement between the respective carriers.

⁷³ *Id* at 29.

⁷⁴ *CMRS Resale Reconsideration Order* at 69.

Section 20.12(c)⁷⁵ provides that any “covered CMRS” carrier must provide mobile radio service upon request to any subscriber in good standing, including roamers, while the subscriber is within any portion of the licensee’s licensed service area, and assuming that the subscriber is using technically compatible mobile equipment. The rule only mandates that carriers offer manual roaming, and does not require provision of automatic roaming. The rule was adopted in 1996.⁷⁶

Purpose

The purpose of the roaming provision is to ensure seamless service to wireless customers who roam out of their home service areas, and to prevent carriers from restricting competition and consumer choice through refusal to provide service to roamers.

Analysis

Status of Competition

Most cellular carriers have reached automatic roaming agreements among themselves, even though section 20.12 only mandates manual roaming. Carriers such as AT&T, Nextel, and Verizon have also developed nationwide “footprints” and wide-area calling plans that give their customers the ability to receive service outside their local area without paying roaming charges. However, some local and regional carriers have alleged that they have been unable to enter into roaming agreements with competing carriers. Consumers’ ability to roam may also be limited because they can only roam on networks that use the same technical standard (CDMA, TDMA, GSM, Iden) as the home carrier.

Advantages

The roaming rule provides a clear baseline standard for carriers to follow with respect to the provision of roaming. It is also minimally intrusive because it does not require CMRS carriers to reconfigure their systems to support technically incompatible roaming.

Disadvantages

Manual roaming obligations impose some administrative and technical burdens associated with caller verification, billing, and similar issues.

Recent Efforts

At the time that it adopted the manual roaming rule, the Commission also issued a *Third Notice of Proposed Rulemaking* in CC Docket 94-54 on (1) whether to sunset the manual roaming rule, and (2) whether to mandate automatic roaming for any carriers.⁷⁷ On August 28, 2000, the Commission released a *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, in which it affirmed the existing manual roaming rule, with some modification

⁷⁵ 47 C.F.R. § 20.12(c).

⁷⁶ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996) (*CMRS Roaming Order*).

⁷⁷ *Id.*

and clarification.⁷⁸ The Commission also concluded that in light of technological advances and the rapid expansion of the CMRS market since the 1996 Roaming order, a new rulemaking proceeding should be initiated to address the impact of these developments on issues relating to both automatic and manual roaming. The Commission stated that it would initiate such a proceeding in the near future.

Recommendation

The staff recommends that issues relating to whether to retain, eliminate, or sunset the roaming rule be addressed in the upcoming rulemaking proceeding.

⁷⁸ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Third Report and Order and Memorandum Opinion and Order on Reconsideration*, FCC 00-251 (adopted July 13, 2000; released August 28, 2000).

PART 20, SECTION 20.18 – 911 SERVICE

Description

Section 20.18⁷⁹ requires certain broadband CMRS providers (delineated in subpart (a) of this rule) to comply with guidelines set by the Commission for the implementation of Enhanced 911 services (E911) for all of their customers, including those customers requiring TTY devices.

Section 20.18 was adopted in 1996 in CC Docket No. 94-102.⁸⁰ The rule provides for implementation of E911 in two phases. In Phase I, CMRS carriers must implement E911 capability in their networks that will provide 911 dispatchers with a callback number as well as the location of the cell site that received the call, which will enable the dispatcher to estimate the caller's whereabouts. In Phase II, carriers must provide Automatic Location Identification (ALI) capability for all 911 calls placed by wireless telephone users, so that the caller's location can be determined with greater accuracy.

The rule provides for implementation of Phase I by April 1, 1998. In Phase II, licensees who employ network-based solutions must provide service to at least 50 percent of their coverage area or their population by October 1, 2001, and licensees employing handset-based technologies must ensure that at least 50 percent of all new handsets activated are location-capable by October 1, 2001.⁸¹ Section 20.18 further describes who must comply with E911 requirements, the basic E911 service that CMRS carriers must provide, as well as the accuracy percentage and timeframe in which these services must be deployed. Finally, the rule provides alternative requirements for carriers who choose to employ an intermediary dispatcher rather than routing their customers' 911 calls directly to a Public Safety Answering Point (PSAP).

Purpose

The purpose of section 20.18 is to enhance public safety and facilitate effective and efficient law enforcement. Without E911 services, a dispatcher receiving a wireless 911 call can only obtain information regarding the caller's location and callback number if the caller is able to provide it. This contrasts to certain advanced features that are available to wireline 911 customers. By mandating that public safety service providers have the ability to locate wireless callers instantly and accurately, section 20.18 rule attempts to provide the same reliable and ubiquitous aid to wireless 911 callers that is available to wireline callers.

Analysis

Advantages

The E911 rule sets national standards and deadlines to ensure that all CMRS carriers throughout the U.S. will provide E911 services in a timely manner. This encourages equipment manufacturers and CMRS carriers to take public safety into consideration in the design and

⁷⁹ 47 C.F.R. § 20.18.

⁸⁰ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676 (1996).

⁸¹ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Third Report and Order*, 14 FCC Rcd 17388, 17436 (1999) (*Third Report and Order*).

production of equipment and the provision of service. At the same time, the rule is technologically and competitively neutral, which allows carriers and equipment manufacturers to make their own decisions as to the best method for implementing E911 capability. Allowing manufacturers and carriers to adopt the technology of their choice also lowers costs and fosters technological innovation, because it encourages the parties to arrive at a solution that is both effective and cost-efficient. Finally, because section 20.18 clearly delineates CMRS provider's obligations as to E911 services and ALI compatibility, the FCC can easily determine which carriers have failed to comply with the mandate and are not providing sufficient E911 services.

Disadvantages

The E911 rule imposes administrative, technical, and economic costs on carriers who must reconfigure their networks to comply with the rule.

Recent Efforts

The Commission has been considering waiver requests from CMRS providers to extend the deadlines for implementation in order to reflect and recognize new technologies whose implementations cannot be completed in the allotted timeframe. On September 8, 2000, the Commission issued a *Fourth Memorandum Opinion and Order* in the E911 proceeding, in which it (1) extended from October 1, 2000 to November 9, 2000, the date for carriers to file E911 Phase II implementation reports; (2) extended the deadline for carriers to begin selling and activating ALI-capable handsets from March 1, 2001 to October 1, 2001; (3) adopted a revised phase-in schedule for deployment of ALI-capable handsets; and (4) extended from December 31, 2004, to December 31, 2005, the date for carriers to reach full penetration of ALI-capable handsets in their total subscriber bases.⁸² The Commission also granted a limited waiver of the accuracy standards to VoiceStream Wireless to permit it to deploy a "hybrid" location solution, subject to a timetable that will require it to deploy ALI-capable handsets faster than the timetable originally set forth in the *Third Report and Order*, and substantially faster than the revised timetable adopted in the current Order.

Recommendation

Due to the crucial role that the E911 rule plays in upholding and enhancing public safety, the staff recommends that this rule be retained. While E911 requirements impose a burden on CMRS providers, the necessity of providing sufficient E911 services for callers in need outweighs this burden. The staff recommends that Commission continue to review the rule as implementation of E911 progresses.

⁸² *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order*, FCC 00-326 (adopted August 24, 2000; released September 8, 2000).

**PART 20, SECTION 20.20 - CONDITIONS APPLICABLE TO PROVISION OF CMRS SERVICE
BY LOCAL EXCHANGE CARRIERS**

Description

Section 20.20⁸³ requires incumbent LECs (ILECs) providing in-region broadband CMRS to provide such services through a separate affiliate. The rule further imposes restrictions on the separate affiliate, including: (1) maintaining separate books of account; (2) not jointly owning transmission or switching facilities with the affiliated ILEC that the ILEC uses for the provision of local exchange services in the same market; and (3) acquiring any services from the affiliated ILEC on a compensatory arm's length basis pursuant to our affiliate transaction rules.⁸⁴

Additionally, Title II common carrier services, or services, facilities or network elements provided pursuant to sections 251 and 252, that are acquired from the affiliated ILEC must be available to all other carriers, including CMRS providers, on the same terms and conditions. Furthermore, all transactions between the ILEC and the cellular affiliate must be reduced to writing, and a copy of all such agreements (other than interconnection agreements) must be available for inspection upon reasonable request by the Commission.

Rural ILECs are exempt from the separate affiliate requirement. A competing CMRS carrier interconnected with the rural telephone carrier may petition the Commission to remove the exemption where the rural telephone company has engaged in anti-competitive conduct. Small- and mid-sized ILECs serving fewer than two percent of the nation's subscriber lines are entitled to petition the Commission for suspension or modification of the separate affiliate requirement.

Section 20.20 was adopted in 1997 in WT Docket No. 96-162.⁸⁵ The rule became effective on February 11, 1998. Section 20.20(f)⁸⁶ provides that the rule will sunset on January 1, 2002.

Purpose

The purpose of the ILEC/CMRS separate affiliate requirement is to prevent ILECs from using their market power in the local exchange market to engage in anti-competitive practices in the CMRS market.

Analysis

Advantages

The separate affiliate rule promotes competition by requiring transparency and arm's length transactions between ILECs and their CMRS affiliates, and by ensuring that ILECs cannot offer their CMRS affiliates more favorable terms and conditions than they offer to unaffiliated competing CMRS providers. The rule also provides greater flexibility for rural, small, and mid-

⁸³ 47 C.F.R. §20.20.

⁸⁴ 47 C.F.R. §20.20(a).

⁸⁵ *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order*, 12 FCC Rcd 15668 (1997).

⁸⁶ 47 C.F.R. §20.20(f).

sized ILECs, where there is less risk of the ILEC having sufficient market power to restrain CMRS competition.

Disadvantages

By requiring use of a separate affiliate for CMRS operations, separate ownership of certain facilities, and written, arms-length transactions between ILECs and their CMRS affiliates, section 20.20 increases transaction costs for carriers subject to the rule.

Recent Efforts

The Commission has recently denied petitions for reconsideration of the separate affiliate requirements in section 20.20.⁸⁷

Recommendation

In light of the Commission's recent orders on reconsideration of the separate affiliate rule, and the fact that the rule is scheduled to sunset on January 1, 2002, the staff does not recommend any changes to section 20.20 at this time. The staff will continue to evaluate whether the competitive conditions in the local exchange market merit continued application of the rule.

⁸⁷ *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, First Order on Reconsideration*, 14 FCC Rcd 11343 (1999) (denying petition Independent Telephone and Telecommunications Alliance (ITTA)); *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Second Order on Reconsideration*, 15 FCC Rcd 414 (1999) (denying petitions of Aliant Communications Co. and Guam Cellular and Paging, Inc.).

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Description

Statutory authority for Part 21 of the Commission's rules is found in Titles I through III of the Communications Act of 1934, as amended. The purpose of the rules and regulations in Part 21 is to prescribe the manner in which portions of the radio spectrum may be made available for domestic communication common carrier and multipoint distribution service non-common carrier operations which require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

Part 21 is organized into seven lettered sub-parts (excluding reserved subparts):

- A – General
- B – Applications and Licenses
- C – Technical Standards
- D – Technical Operation
- E – Miscellaneous
- F – Developmental Authorizations
- G-J – [Reserved]
- K – Multipoint Distribution Service

Purpose

Part 21 is intended to ensure that licensees are financially and technically qualified to provide service in a manner that will not create interference with authorized transmissions. The procedures prescribed in Part 21 are designed to provide the Commission and the public with adequate information regarding licensees, prospective licensees, facilities, and proposed changes in facilities or in the ownership or control of licensees. Finally, the rules are intended to promote efficient use of the radio spectrum and to encourage innovation in communication services, equipment, and techniques.

Analysis

Status of Competition

Part 21 licensees provide video programming in competition with cable television systems, broadcast television stations, direct broadcast satellite systems, and other multichannel video programming distributors. *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 15 FCC Rcd 978 (2000). In addition, as a result of the Commission's decisions in its *Two-Way Rulemaking*,⁸⁸ Part 21 licensees now may offer two-way broadband transmission services in competition with numerous wireline and wireless service providers. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, 14 FCC Rcd 2398, 2422-31 (1999).

⁸⁸ *Two-Way Rulemaking*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, FCC No. 00-244 (rel. July 21, 2000).

Advantages

Part 21 licenses are awarded through a competitive bidding process, which creates an incentive for rapid deployment of services and, thus, promotes efficient use of the radio spectrum. The technical standards in Part 21 ensure interference protection and promote effective use of proposed and authorized facilities. The Part 21 rules further benefit the public by affording access to information regarding licensees, prospective licensees, facilities, and proposed changes in facilities or in the ownership or control of licensees. Such access also reduces the cost of enforcing Commission rules by facilitating analysis by interested parties, thereby supplementing Commission review and enforcement efforts. Finally, Part 21 promotes innovation through the availability of developmental authorizations for technical experimentation.

Disadvantages

Part 21 contains language and requirements that have been superseded by recent Commission rulemakings.

Recent Efforts

The Commission's decisions in its *Two-Way Rulemaking*, cited *supra*, allow Part 21 licensees to use their assigned frequencies to provide two-way communication services and to alternate between providing service on a common carrier or non-common carrier basis. Recent changes in the Part 21 attribution rules encourage investment in Part 21 services by relaxing ownership restrictions. *Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559 (1999).

Recommendation

The Staff recommends that Part 21 be reviewed to ensure consistency with recent Commission rulemakings.

PART 22 – PUBLIC MOBILE SERVICES

Description

Part 22⁸⁹ contains licensing, technical, and operational rules for five commercial mobile radio (CMRS) services historically described as “Domestic Public Land Mobile Radio Services” or “DPLMRS.” These services are the Paging and Radiotelephone Service, the Cellular Radiotelephone Service, the Rural Radiotelephone Service, the Air-Ground Radiotelephone Service, and the Offshore Radiotelephone Service. Although these services differ in matters such as the allocated frequency bands, historical licensing methods, and technologies used, the common purpose of all of them is to make it possible for competing carriers to offer wireless mobile and/or fixed telecommunications services (especially paging and telephone service) to the public on a commercial basis. In general, the rules in this part: (1) specify the frequency bands allocated to each service; (2) provide methods for determining the protected service area of stations in each service; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, transmitter power) to reduce the likelihood of interference.

Part 22 comprises 10 subparts:

- Subpart A - Scope and Authority
- Subpart B - Licensing Requirements and Procedures
- Subpart C - Operational and Technical Requirements
- Subpart D - Developmental Authorizations
- Subpart E - Paging and Radiotelephone Service
- Subpart F - Rural Radiotelephone Service
- Subpart G - Air-Ground Radiotelephone Service
- Subpart H - Cellular Radiotelephone Service
- Subpart I - Offshore Radiotelephone Service
- Subpart J - Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Subparts A, B, and C apply generally to all Part 22 licensees. Subpart D provides for the licensing on a developmental basis of stations that are to be used for testing new technologies or services. Each of the next five subparts (subparts E through I) contains rules applicable to one of the five specific Part 22 services. Finally, subpart J implements the provisions of the Communications Assistance for Law Enforcement Act (CALEA) as they apply to Part 22 services.

Purpose

Part 22 of the Commission’s rules comprises a minimal regulatory framework that facilitates the rapid, efficient provision of commercial wireless telecommunications services to the general public at reasonable rates, by: (1) utilizing a competitive bidding process to issue exclusive licenses to the service provider applicants who value them most; (2) preserving and enhancing competition between these service providers once licensed; (3) ensuring that available spectrum allocations are used efficiently; and (4) reducing the likelihood of harmful interference between licensed stations.

⁸⁹ 47 C.F.R. Part 22.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, CMRS providers, including those licensed under Part 22, operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.⁹⁰ The only Part 22 radio service that is not experiencing an increase in competition at this time is the Air-Ground Radiotelephone Service, where there are currently only two remaining licensees, GTE Airphone and ATT Claircom, of the six that were originally licensed.

Advantages

Overall, the Part 22 rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 22, provision for accepting competing mutually exclusive applications and selecting the licensee by means of competitive bidding results in licenses being issued to the entities that value them the most. Geographic area licensing minimizes the amount of paperwork involved in obtaining a license and thus speeds the authorization of new competitive services to the public. Minimal and flexible technical standards facilitate the introduction of new technologies.

Disadvantages

The Part 22 rules impose administrative burdens inherent to the licensing process and to compliance with technical and operational rules. In addition, the flexible technical standards in most Part 22 services place the burden of coordination to avoid and resolve harmful interference between systems largely on the licensees themselves, which may increase transaction costs. Finally, while certain portions of the Part 22 rules have been recently revamped, other portions, most notably the cellular rules in subpart H, are now more than a decade old, and therefore may not appropriately reflect significant technological and competitive changes that have occurred in wireless services in recent years.

Recent Efforts

The Commission has made significant changes to its Part 22 rules in recent years. For example, in the Universal Licensing proceeding, the Commission eliminated many of the service-specific licensing rules in Part 22 as part of its consolidation of all wireless licensing rules into Part 1.⁹¹ The Commission also recently completed a comprehensive overhaul of its paging rules, in which it finalized the rules for the transition from site-by-site to geographic licensing and award of geographic paging licenses by auction.⁹²

⁹⁰ *Fifth Competition Report*, *supra* at 9-27, 36-63.

⁹¹ *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order*, 13 FCC Rcd 21027 (1998); *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11145 (1998).

⁹² *In the Matter of Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999) (*Paging Systems Reconsideration Order*).

Recommendation

Many of the rules in Part 22 are integral to the basic spectrum management functions of the Commission. The necessity for these rules is not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly revised and streamlined portions of the Part 22 rules in recent proceedings. However, Part 22 also contains a number of relatively old rules, particularly rules applicable to cellular service, that were adopted when wireless technology and competitive conditions were very different from the present day. For example, section 22.937,⁹³ which requires demonstration of a cellular applicant's financial qualifications, was adopted in connection with the use of lotteries to award licenses, which has been superseded by the use of competitive bidding. Similarly, section 22.323⁹⁴ allows Part 22 licensees to provide "incidental" fixed services, but prohibits cross-subsidization of such services by subscribers to CMRS services – a rule that appears anachronistic given that CMRS rates are fully deregulated. Therefore, the staff recommends that as part of the 2000 Biennial Regulatory Review, the Commission should undertake a comprehensive review of the Part 22 cellular rules as well as other portions of Part 22 that have not received recent scrutiny.

⁹³ 47 C.F.R. § 22.937.

⁹⁴ 47 C.F.R. § 22.323.

PART 22, SUBPART E – PAGING AND RADIOTELEPHONE SERVICE

Description

Part 22, subpart E⁹⁵ contains licensing, technical, and operational rules for the Paging and Radiotelephone Service (“PARS”), which is the original public mobile telephone service that was established in the 1960s. This service was originally titled the “Domestic Public Land Mobile Radio Service” or “DPLMRS.” Frequency bands in the low VHF (35-43 MHz), high VHF (72-76 MHz, 152-157 MHz), and UHF (454-459 MHz, 470-512 MHz and 931 MHz) ranges of the spectrum are allocated to this service. Although originally used by local telephone companies and other carriers to provide the original analog mobile telephone service (“Improved Mobile Telephone Service” or “IMTS”), these allocations today are primarily used for tone, voice, numeric and alphanumeric paging services. In general, the rules in this subpart: (1) specify the frequency bands allocated to PARS; (2) provide methods for determining the reliable service area and interfering contour of individual stations; (3) establish construction and commencement of operation requirements for licensees; and (4) define technical limits on operation (*e.g.*, transmitter power) to reduce the likelihood of interference.

The PARS rules have evolved considerably over the years as demand for paging service has increased while demand for the older type of non-cellular analog mobile telephone service has declined with the advent of cellular service. The PARS rules originally provided for two-way mobile radiotelephone service with paging allowed on a secondary basis, but they have evolved to focus primarily upon paging. There are also rules pertaining to the operation of internal point-to-point and point-to-multipoint fixed links that are essential for local and regional paging systems.

Currently, Part 22, subpart E is organized into six groups of rules. The first (sections 22.501-22.529) is a group of rules applying to all PARS stations.⁹⁶ Each of the subsequent five groups contains technical and operational rules pertaining only to a particular type of operation on specified channels. The types of operation are paging (sections 22.531-22.559),⁹⁷ one- and two-way mobile (sections 22.561-22.589),⁹⁸ point-to-point (sections 22.591-22.603),⁹⁹ point-to-multipoint (sections 22.621-22.627),¹⁰⁰ and trunked mobile operation (sections 22.651-22.659).¹⁰¹ Some of the PARS 454-459 MHz channels are shared with basic exchange telephone radio systems (providing Rural Radiotelephone Service) and potentially with non-geostationary low earth orbit (“Little LEO”) satellite downlinks.

⁹⁵ 47 C.F.R Part 22, subpart E.

⁹⁶ 47 C.F.R. §§ 22.501-22.529.

⁹⁷ 47 C.F.R. §§ 22.531-22.559.

⁹⁸ 47 C.F.R. §§ 22.561-22.589.

⁹⁹ 47 C.F.R. §§ 22.591-22.603.

¹⁰⁰ 47 C.F.R. §§ 22.621-22.627.

¹⁰¹ 47 C.F.R. §§ 22.651-22.659.

Purpose

The purpose of subpart E is to facilitate the provision of commercial one-way and two-way wireless telecommunications services, in particular, one-way paging, to the general public at reasonable rates by: (1) utilizing a competitive bidding process to issue exclusive licenses to the service provider applicants who value them most; (2) preserving and enhancing competition between these service providers once licensed; (3) ensuring that available spectrum allocations are used efficiently; and (4) reducing the likelihood of harmful interference among licensed stations.

Analysis

Status of Competition

PARS stations governed by subpart E compete directly with Part 90 commercial paging services and with Part 24 narrowband PCS, and they compete indirectly with other CMRS. The *Fifth Competition Report* notes that one-way paging service subscribership appears to have peaked in 1999, and is now declining.¹⁰² Analysts believe that this trend is the result of declining prices for alternative options, such as cellular and broadband PCS services, which include paging, voice mail and text messaging capabilities. Paging providers that have sufficient spectrum are attempting to reposition themselves in the market as wireless data providers.

Advantages

The PARS rules provide a clear, predictable regulatory structure for the assignment and use of the spectrum allocated to PARS service. Provision for accepting competing mutually exclusive applications and selecting the licensee by means of competitive bidding results in licenses being issued to the entities that value them the most. Geographic area licensing minimizes the administrative burden involved in obtaining a license. The technical rules are flexible enough to allow transition to narrowband technology capable of providing wireless data services.

Disadvantages

The PARS rules impose some burdens related to compliance with technical and operational rules. Although the Commission converted the authorization of the PARS from the original site-by-site procedure to a geographic area licensing process, several detailed technical rules related to the site-by-site procedure have been retained in order to protect the investment of grandfathered incumbent licensees in areas where the geographic licensee is a different entity.

Recent Efforts

The Commission made significant changes to its Part 22 subpart E rules during the last decade. In WT Docket No. 96-18, the Commission converted the authorization of stations in the PARS from the original site-by-site procedure to a geographic area licensing process.¹⁰³ More recently,

¹⁰² *Fifth Competition Report, supra*, at 57-58.

¹⁰³ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997).

most of the application filing rules were moved from this subpart to Part 1 in connection with implementation of electronic filing procedures and the Universal Licensing System.¹⁰⁴

Recommendation

Most of the remaining rules in Part 22, subpart E are technical rules that are integral to the basic spectrum management function of the Commission, *e.g.*, reducing the likelihood of harmful interference between PARS licenses. The necessity for these technical rules is not significantly affected by changes in the level of competition in these services or CMRS generally. Moreover, as noted above, the Commission has recently made significant revisions that restructured and streamlined the Part 22 licensing rules. However, in view of the trends in paging and other CMRS services, the staff recommends that the Commission consider, *inter alia*, eliminating the following rules:

- Limits on the number of paging channels that a licensee can obtain in the same area at one time.
- Rules that impose operational burdens, such as station identification requirements, where the advance of technology may have made the cost of the rule exceed the benefit.
- 470-512 MHz Trunked Mobile Operation rules (sections 22.651 through 22.659). The availability of cellular service has made limited local trunked radiotelephone systems obsolete and the Commission has phased out this type of operation on this frequency band.
- Rules related specifically to services and technologies that were never implemented or have gone out of use (*e.g.*, sections 22.161, 22.603).

¹⁰⁴ See Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order, 13 FCC Rcd 21027 (1998).

PART 22, SUBPART F – RURAL RADIOTELEPHONE SERVICE

Description

Part 22 subpart F¹⁰⁵ contains licensing, technical, and operational rules for the Rural Radiotelephone (Rural Radio) Service. The rules contain provisions governing eligibility, assignment of channels, and management of interference.

Rural Radio service is the only service regulated under Part 22 that is a fixed, rather than mobile, service. Rural Radio service makes basic telephone service available to persons who live in remote rural locations where it is not feasible, because of cost, environmental factors, or other practical concerns, to provide such service by wire. The rules provide that Rural Radio interoffice stations can also be used to link central offices where wireline links are similarly infeasible.

Two types of facilities are authorized in the Rural Radio service – conventional Rural Radio stations and basic exchange telephone radio systems (BETRS). Both types may be licensed on channel pairs in the high VHF (152-158 MHz) and low UHF (454-459 MHz) bands that are also allocated on a co-primary basis to the Paging and Radiotelephone service.¹⁰⁶ This co-primary allocation has worked over the years because there is little demand for paging service in the remote areas where Rural Radio service is needed, and likewise there is no need for Rural Radio service in suburban and urban areas where paging services are in demand. In WT Docket 96-18, the Commission provided for geographic area licensing of these bands for both paging and Rural Radio purposes.¹⁰⁷ However, because Rural Radio operators may seek to serve only a small portion of a geographic licensing area, the Commission also adopted a rule provision allowing Rural Radio licensees to operate individual sites on a secondary basis.¹⁰⁸

Conventional Rural Radio stations may be licensed to any existing or proposed common carrier. These stations operate on exclusively assigned paired channels and are considered for regulatory purposes to be interconnected to, but not a part of, the local loop. Consequently, conventional Rural Radio stations do not have to meet state requirements affecting the local loop (*e.g.*, call blocking, transmission quality). Conventional stations use traditional analog FM technology and provide one telephone line per assigned channel pair. Often, two or more subscribers share service from a single Rural Radio station, party-line fashion.

Unlike conventional Rural Radio, BETRS facilities may only be licensed to entities that have been state certified to provide local exchange service in the geographic area in question (*e.g.*, LECs and CLECs). BETRS also operate on exclusively assigned paired channels, but they are considered, for regulatory purposes, to be a part of the local loop, and therefore must meet state standards applicable to the local loop. BETRS systems typically use digital TDMA technology that allows 2 or 4 independent (*i.e.*, private) telephone lines per assigned channel pair.

¹⁰⁵ 47 C.F.R. Part 22, subpart F.

¹⁰⁶ See summary of Part 22, subpart E, *supra*.

¹⁰⁷ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997).

¹⁰⁸ 47 C.F.R. § 22.723.

Purpose

The purpose of the Rural Radio rules is to facilitate provision of basic telephone service to persons who live in remote rural locations where it is not feasible to provide such service by wire.

Analysis

Status of Competition

The Rural Radio service was established in the 1970s to provide an extension of, rather than competition for, regular wireline local loop service. It is generally used only as a last resort in the most remote rural areas where wireline telephone service is not feasible or cost-effective. Rural Radio frequencies offer very limited traffic capacity, which would not be sufficient to provide viable telephony competition in suburban and urban areas, where these channels are primarily used by paging carriers. Historically, Rural Radio customers have had few if any competitive alternatives for provision of telephony due to their geographic isolation. More recently, however, other wireless services, such as cellular and PCS, have begun to expand into areas served by Rural Radio, and availability of competitive alternatives is likely to increase in the future.

Advantages

The rules in Part 22, subpart F provide a clear, predictable structure for the assignment and use of the spectrum co-allocated to the Rural Radio service to provide basic telephone service to persons who live in remote rural locations.

Disadvantages

As discussed below, some of the rules concerning Rural Radio appear to have become outdated as a result of technological developments since the rules were adopted.

Recent Efforts

The Commission has not recently revised the Rural Radio rules other than to establish geographic licensing rules, as discussed above.

Recommendation

In general, the staff recommends retention of the Rural Radio rules. However, some of these rules appear to have become outdated. Sections 22.417, 22.727, and 22.729¹⁰⁹ provide for the use of certain low VHF (44 MHz) channels for meteor-burst Rural Radio stations. It appears that these sections have not been used for many years, probably because of the availability of better alternatives in Alaska. The Commission should attempt to determine whether there are any such systems still in operation and, if not, propose to remove the meteor burst provisions.

Section 22.757¹¹⁰ provides a limited allocation of private radio channels in the high UHF band (816-865 MHz) for BETRS use in certain areas. These have never been applied for or used for BETRS because of their limited geographic availability, and because there is no equipment suitable for BETRS in this band. Also, the private radio rules governing these channels have

¹⁰⁹ 47 C.F.R. §§ 22.417, 22.727, 22.729.

¹¹⁰ 47 C.F.R. § 22.757.

been substantially changed since this allocation was made. The Commission should consider removing this allocation from the Rural Radio service.

PART 22, SUBPART G – AIR-GROUND RADIOTELEPHONE SERVICE

Description

Part 22, subpart G¹¹¹ contains licensing, technical, and operational rules for the Air-Ground Radiotelephone Service (“AGS”). AGS provides commercial telephone service to persons in airborne aircraft, using telephone instruments that are permanently mounted in the aircraft.

AGS consists of two separate parts: General Aviation air-ground stations and Commercial Aviation air-ground systems. General Aviation air-ground stations are permitted to serve only “general aviation” aircraft, which are aircraft owned by individuals or businesses for their own use that do not carry passengers for hire. General Aviation air-ground stations were first established in the late 1960s and operate in the 454-459 MHz range. General Aviation ground stations operate independently rather than as a system. Consequently, when an aircraft flies out of range of a ground station, any call in progress disconnects, and the user must then redial through another ground station. There are about 86 operational ground stations in the U.S.

Commercial Aviation air-ground systems are permitted to serve any type of aircraft, but primarily serve passengers aboard commercial airlines. Commercial Aviation systems use seat-back and bulkhead-mounted telephones commonly seen on commercial flights. These systems were established in the 1980s and operate in the 850-895 MHz range. Commercial aviation air-ground systems are all nationwide systems and calls in progress hand-off from one ground station to another uninterrupted as the aircraft flies across the country.

In general, the subpart G rules: (1) specify the frequency bands allocated to the General Aviation and Commercial Aviation air-ground services; (2) provide separation distance criteria for determining where new ground stations may be established; (3) establish minimum construction or coverage requirements for licensees; and (4) set forth certain technical limits on operation (*e.g.*, transmitter power).

Purpose

The purpose of subpart G is to facilitate the provision of commercial telephone service to persons aboard airborne aircraft.

Analysis

Status of Competition

The number of carriers providing AGS is small and most wireless carriers consider it to be a “niche” market. The principal operators of General Aviation stations are M-Tel and the successor companies of the Bell Operating companies, most notably Airtouch (now Verizon), though other, smaller operators exist also. Although more than one provider can share each ground station control channel pair,¹¹² few if any locations appear to have competing providers.

¹¹¹ 47 C.F.R. Part 22, subpart G.

¹¹² The original General Aviation technology allowed only one operator in each station location. In 1994, however, the Commission mandated use of a new technology, Air-Ground Radiotelephone Automated Service (“AGRAS”), that, among other improvements, allowed two or more competing ground stations in a location to share control channels.

The 850-895 MHz frequencies used by Commercial Aviation air-ground systems can accommodate up to six competing systems, but only three of the six initial licensees ever constructed their systems.¹¹³ Of these three, one (In-Flight Corporation) has gone out of business, so that only two carriers (GTE Airfone and Claircom, operated by AT&T Wireless) remain in operation.

Another potential source of competition in the air-ground sector may be provided by Aircell, which does not operate on AGS frequencies, but was granted a waiver in 1998 to provide air-ground service using specialized equipment that operates on cellular frequencies.¹¹⁴

Advantages

The AGS rules provide a clear, predictable structure for the assignment and use of the air-ground spectrum allocation.

Disadvantages

The AGS rules include highly specific requirements for the technical configuration of air-ground systems and the use of air-ground channels that may inhibit licensee flexibility and technical innovation.

Recommendation

The subpart G rules were largely adopted in the 1980s, and have not been significantly revised since. Air-ground service is also affected by technical and competitive considerations that are distinct from terrestrial CMRS. The staff therefore recommends that the Commission consider initiating a proceeding that would comprehensively review our air-ground rules in light of current technology and competitive conditions. Potential goals of such a proceeding would include: (1) adopting rules that foster competition by eliminating unnecessary barriers to entry; (2) eliminating rules that freeze technological advancement; and (3) providing incentives for existing terrestrial CMRS licensees to provide air-ground service.

¹¹³ Two of the three licensees who failed to construct surrendered their licenses voluntarily, and the third license was ultimately canceled by the Commission.

¹¹⁴ *In the Matter of AirCell, Inc., Petition Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative for a Declaratory Ruling, Order*, 14 FCC Rcd 806 (WTB 1998) (*AirCell Order*), affirmed, *Memorandum Opinion and Order*, 15 FCC Rcd 9622 (2000).

PART 22, SUBPART H– CELLULAR RADIOTELEPHONE SERVICE

Description

Part 22, subpart H¹¹⁵ contains licensing, technical, and operational rules for the Cellular Radiotelephone Service (“cellular service”). This service was created in 1981 as an automated, high-capacity, nationwide-compatible mobile telephone service.¹¹⁶

The spectrum allocated to the cellular service is divided into two channel blocks, A and B. This was done to provide for two competing facilities-based providers in each licensing area. Initially, the cellular license for the B channel block in each licensing area was issued to the wireline telephone company in that area and the license for the A channel block issued to a company other than that wireline telephone company. Because there were multiple A block applicants in most markets, the initial licensee was selected by comparative hearings for the first (largest) 30 markets, and random selection (lotteries) for the remaining markets. After Congress gave the Commission authority to select among mutually exclusive applications using competitive bidding (auctions), the Commission began using auctions instead of lotteries in the cellular service. Throughout the 1980s and 1990s, many of the initial cellular licensees consolidated to form systems covering much larger geographical areas.

In general, the rules in Part 22, subpart H: (1) specify the frequency bands allocated to the cellular service; (2) provide methods for determining the Cellular Geographic Service Area (protected service area) of each system; (3) establish minimum construction and coverage requirements for cellular licensees; and (4) set forth certain technical limits on operation (*e.g.*, transmitter power).

Purpose

The purpose of subpart H is to facilitate the provision of commercial cellular services to the general public at reasonable rates, by: (1) utilizing a competitive bidding process to issue exclusive licenses to the service provider applicants who value them most; (2) preserving and enhancing competition between these service providers once licensed; (3) ensuring that available spectrum allocations are used efficiently; and (4) requiring coordination procedures to prevent harmful interference among cellular systems.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, CMRS providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.¹¹⁷ Cellular is by far the largest mobile radiotelephone service in terms of

¹¹⁵ 47 C.F.R. Part 22, subpart H.

¹¹⁶ The idea of a cellular architecture, that is, a system of base stations, each having a small coverage area, which makes possible the reuse of radio channels at relatively short distances, had been conceptualized in the 1950s, but did not become technologically feasible until the late 1970s, when advances in computer technology needed to manage automatic hand-off of telephone calls between cells were realized.

¹¹⁷ *Fifth Competition Report*, *supra*, at 9-27, 36-63.

subscribers, but competing broadband PCS and enhanced SMR services are rapidly growing. Cellular systems compete with other mobile telephone services principally on the basis of pricing plans, geographical coverage, and operational features.

Advantages

The cellular rules provide a clear, predictable structure for the assignment and use of cellular spectrum. Although initial cellular licenses have been issued in every market, an on-going process allows for the licensing of any areas remaining unserved in those markets after the initial licensee's build out period has expired. The provision for accepting competing mutually exclusive applications for unserved areas and selecting the eventual licensee by means of competitive bidding results in licenses being issued to the entities that value them the most. In addition, the rules contain minimal and flexible technical standards for alternative cellular technologies that facilitate the introduction of digital service and new features.

Disadvantages

The cellular rules impose some administrative burdens inherent in the licensing process and compliance with technical and operational rules. However, some of the subpart H rules appear to be outdated in light of the current state of cellular technology and wireless competition. For example, subpart H contains regulations to prevent speculation and trafficking in cellular licenses, which were adopted at the time that cellular licenses were awarded by lottery. These rules appear to be anachronistic now that cellular licenses are awarded by auction.

In addition, although there are only minimal technical rules governing alternative cellular technologies, such as the digital modes and data services, subpart H continues to contain technical rules for the provision of analog service ("Advanced Mobile Phone Service" or "AMPS"). These rules are based on a 1981 technical compatibility specification, with numerous technical rules governing everything from call processing algorithms to modulation filter performance. As a result, these AMPS technical requirements are at least 15 years out of date.

Recent Efforts

The Commission has made significant changes to its Part 22 rules in recent years, mainly in the areas of increasing spectrum use flexibility¹¹⁸ and streamlining the licensing process to incorporate electronic filing procedures and the Universal Licensing System.¹¹⁹ Currently, the staff is preparing for the Commission's consideration proposals to eliminating cellular technical and administrative rules that have become obsolete because increased competition has caused technology to evolve at a rapid pace.

¹¹⁸ *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996) (*CMRS Flex Order/FNPRM*).

¹¹⁹ *Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*), affirmed and modified in part, *ULS Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999).

Recommendation

Many of the rules in Part 22, subpart H are integral to basic spectrum management functions of the Commission, such as requiring that spectrum assignments be put to full and efficient use. The necessity for some of these rules is not significantly affected by changes in the level of competition in wireless services.

However, as noted above, subpart H also contains a number of relatively old rules, particularly technical rules applicable to cellular service, that were adopted when wireless technology and competitive conditions were very different from the present day. In addition, certain rules (*e.g.*, rules requiring demonstration of an applicant's financial qualifications) were adopted in connection with the use of lotteries to award licenses, which has been superseded by the use of competitive bidding.

Therefore, the staff recommends that as part of the 2000 Biennial Regulatory Review, the Commission should undertake a comprehensive review of the subpart H rules. In accordance, with this recommendation, the staff is preparing a Notice of Proposed Rulemaking that would consider, *inter alia*:

Whether to modify or eliminate, the rule requiring demonstration of financial qualifications by cellular applicants,¹²⁰ which was more appropriate under prior applicant selection systems such as random selection lotteries.

Whether to modify or eliminate the rule requiring cellular systems to operate in conformance with the 1981 AMPS compatibility specification,¹²¹ and various other technical rules that have become obsolete due to the rapid evolution of technology.

Whether to privatize the assignment of system identification numbers. The manufacturing industry has recently formed an organization to manage and administer handset manufacturer codes, which was formerly done by the Wireless Telecommunications Bureau.

¹²⁰ 47 C.F.R. § 22.937.

¹²¹ 47 C.F.R. § 22.933.

PART 22, SUBPART I – OFFSHORE RADIOTELEPHONE SERVICE

Description

Part 22, subpart I¹²² governs the licensing and operation of offshore radiotelephone stations. The Offshore Radiotelephone Service allows Commercial Mobile Radio Service (CMRS) providers to use conventional duplex analog technology to provide telephone service to subscribers located on (or in helicopters en route to) oil exploration and production platforms in the Gulf of Mexico.

Those using this service are licensed to operate in the paired 476/479 and 489/493 MHz bands in three zones comprising Louisiana and Texas, depending on the longitude. The channels were taken from UHF-TV Channels 15 and 17.¹²³

Purpose

The purpose of the subpart I rules is to establish basic rules and procedures for the licensing and operation of offshore radiotelephone stations.

Analysis

Status of Competition

There are several competitive alternatives to Offshore Radiotelephone service in the Gulf. Two cellular companies currently operate in the Gulf of Mexico Service Area (GMSA), and some SMR service providers also operate there on a site-by-site basis. The Commission is also considering licensing in the Gulf in several other spectrum bands, including PCS and the 700 MHz band.¹²⁴

Advantages

The subpart I rules provide a clear, predictable structure for the assignment and use of Offshore Radio spectrum.

Disadvantages

The subpart I rules impose limited administrative and technical burdens that are inherent in the licensing process and compliance with technical and operational rules.

Recent Efforts

The rules in this subpart have not been revised since 1995.

¹²² 47 C.F.R. Part 22, subpart I.

¹²³ 47 C.F.R. § 22.1007.

¹²⁴ We also note that service is provided by other services as well: *e.g.*, PCS, WCS, satellite, VHF maritime, private radio (formerly petroleum radio service), private (offshore), and microwave.

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. Therefore, the staff concludes that significant modification or repeal of the subpart I rules is not necessary at this time.

**PART 22, SUBPART J – REQUIRED NEW CAPABILITIES PURSUANT TO THE
COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)**

Description

The Communications Assistance for Law Enforcement Act (CALEA) was enacted by Congress to establish procedures for law enforcement to obtain authorized access to wireless and wireline communications or call-identifying information where such information is needed for law enforcement purposes.¹²⁵ Part 22, subpart J¹²⁶ contains technical standards and capabilities for cellular carriers to ensure that communications and call-identifying information will be accessible to law enforcement, as required by section 103 of CALEA.¹²⁷ These rules were adopted in 1999.¹²⁸ The Commission has adopted parallel requirements and standards for broadband PCS licensees in Part 24, subpart J¹²⁹ and for wireline telecommunications carriers in Part 64, subpart W.¹³⁰

Purpose

The purpose of the CALEA rules is to ensure that law enforcement, pursuant to court order or other lawful authorization, will have reasonable access to wireless and wireline communications or call-identifying information where such information is needed for law enforcement purposes.

Analysis

Advantages

These rules arose from the Commission's specific statutory role as arbiter of differences among industry, law enforcement, and other interested parties regarding standards for complying with section 103 of CALEA. In large part, they reflect the consensus reached during the standard-setting process, as modified through application of the Commission's expertise in areas where consensus was not reached.

Disadvantages

The CALEA rules impose technical burdens on carriers to comply with the accessibility requirements of the statute, and may limit technical flexibility and innovation.

Recent Efforts

On August 15, 2000, the D.C. Circuit vacated and remanded for further explanation the CALEA rules insofar as they imposed certain capability requirements in excess of industry-adopted technical standards.

¹²⁵ 47 U.S.C. § 1002.

¹²⁶ 47 C.F.R. Part 22, subpart J.

¹²⁷ *Id.*

¹²⁸ *See Communications Assistance for Law Enforcement Act, Third Report and Order*, 14 FCC Rcd 16794 (1999).

¹²⁹ 47 C.F.R. Part 24, subpart J.

¹³⁰ 64 C.F.R. Part 64, subpart W.

Recommendation

The staff recommends that the Commission reconsider its capability standards in light of the D.C. Circuit's remand.

PART 23 – INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

Description

Part 23 implements and interprets sections 4, 301, and 303 of the Communications Act of 1934, as amended.¹³¹ Part 23 sets forth rules applicable to high frequency (“HF”) radio systems used for international communications, including general licensing and service rules, application filing requirements, and technical specifications. The rules classify these systems as either “fixed public service” (a radiocommunication service carried on between fixed stations open to public correspondence) or “fixed public press service” (a radiocommunication service carried on between point-to-point telegraph stations, open to limited public correspondence of news items or other material related to or intended for publication by press agencies, newspapers, or for public dissemination).

Although Part 23 does not contain lettered sub-parts, the rules are organized as follows:

Section 23.1	Definitions
Sections 23.11-23.12	Use of frequencies
Sections 23.13-23.19	Technical specifications
Sections 23.20-23.27	Use of frequencies
Sections 23.28-23.55	Licensing and service rules

Purpose

The Commission has stated that the original purpose of the Part 23 rules is “obscure.” *Western Union Telegraph Co., Memorandum Opinion and Order*, 75 F.C.C.2d 461, 472 ¶ 39 (1980) (*Western Union MO&O*). Neither the Federal Communications Commission nor the Federal Radio Commission has issued any opinion explaining the rationale for the rules. *See id.* (research updated as of December 12, 1979). The FCC has not opined on these rules since the *Western Union MO&O*.

In the *Western Union MO&O*, the Commission stated that the rules contained in Part 23 derive from those promulgated by the Federal Radio Commission in 1932. At that time, fixed wireless links presumably provided an important method of communications between: (1) the contiguous 48 States (including D.C.) and Alaska, Hawaii, any U.S. possession, or any foreign point; (2) Alaska and any other point; (3) Hawaii and any other point; and (4) any U.S. possession and any other point. Part 23 provides the regulatory framework for these services. In addition, Part 23 governs radiocommunication within the contiguous 48 States (including D.C.) in connection with relaying the above-referenced international traffic.

Analysis

Status of Competition

Use of HF radio facilities in providing carriers’ international communications services in the age of submarine cable and satellites is virtually dormant. There are two active Part 23 licensees, with a recently-filed Part 23 application – the first in several years – still pending. Competition among services under this rule Part is therefore not relevant.

¹³¹ 47 U.S.C. §§ 154, 301, 303.

Advantages

Part 23 provides the requisite framework within which licensees can perform useful functions in the provision of international communications services. HF radio stations can be a functionally useful supplement to submarine cable and satellite systems in the provision of service to overseas points not easily or economically reached by these facilities, in the provision of a limited restoral capability during submarine cable or satellite outages, and in the provision of certain specialized services such as press and weather map broadcast services.

Disadvantages

Because the type of international traffic addressed in these rules now is carried primarily by undersea cable and satellite, there is considerably less need for regulation in this area.

Recent Efforts

None.

Recommendation

Part 23 is ripe for streamlining or elimination. However, the staff recommends that Part 23 be retained in its entirety pending an in-depth Commission review to determine how the few remaining licensees are using this service and to project when submarine cable and satellite will fully supplant this service. Should the Commission determine that this service warrants continued regulation, the staff recommends the repeal of Part 23, with the necessary regulatory mechanisms (most likely, technical standards) incorporated into Part 90 or Part 101, each of which regulates similar services.

PART 24 — PERSONAL COMMUNICATIONS SERVICES

Description

Part 24¹³² contains licensing, technical, operational, and auction rules for broadband and narrowband Personal Communications Services (PCS).¹³³ The rules in this part: (1) define PCS licensing areas; (2) specify the frequencies available to PCS licensees; (3) establish license terms and operational parameters; (4) set forth minimum coverage requirements for licensees; (5) establish minimum technical standards and limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference; and (6) set forth application procedures and competitive bidding rules for the auction and award of PCS licenses.

In addition, subpart J contains requirements applicable to PCS under the Communications Assistance for Law Enforcement Act (CALEA).¹³⁴ Specifically, these rules set forth certain capability standards applicable to broadband PCS telecommunications carriers in order to ensure that, when properly authorized, law enforcement has access to communications or call-identifying information.

Part 24 is organized into ten lettered sub-parts:

- A – General Information
- B – Applications and Licenses
- C – Technical Standards
- D – Narrowband PCS
- E – Broadband PCS
- F – Competitive Bidding Procedures for Narrowband PCS
- G – Interim Application, Licensing and Processing Rules for Narrowband PCS
- H – Competitive Bidding Procedures for Broadband PCS
- I – Interim Application, Licensing and Processing Rules for Broadband PCS
- J – Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

¹³² 47 C.F.R. Part 24.

¹³³ Narrowband PCS operates on the 901-902, 930-931, and 940-941 MHz bands. Broadband PCS operates in the 1850-1910 and 1930-1990 MHz bands.

¹³⁴ See Communications Assistance for Law Enforcement Act (CALEA), Pub. Law No. 103-414, 108 Stat. 4279 (1994).

The Part 24 rules were initially adopted in 1993,¹³⁵ and were modified on reconsideration in 1994.¹³⁶ The Commission has recently issued an order further revising certain aspects of the Part 24 narrowband PCS rules.¹³⁷ The CALEA rules were adopted in a separate proceeding in 1999.¹³⁸

Purpose

The purpose of the Part 24 rules is to establish basic ground rules for assignment of PCS spectrum, to ensure efficient spectrum use by PCS licensees, and to prevent interference. In addition, Part 24 contains rules that define eligibility for the PCS entrepreneurs' blocks and for "designated entity" (*i.e.*, small business) status within these blocks. The purpose of these provisions is to implement the objectives of section 309(j)(3) of the Communications Act¹³⁹ that the distribution of PCS licenses is not excessively concentrated, and that small businesses, rural telephone companies, and businesses owned by women and minorities will have opportunities to participate in the provision of PCS.

Analysis

Status of Competition

Broadband PCS providers primarily offer mobile telephony service in competition with cellular and some SMR services. As described in the *Fifth Competition Report*, the broadband PCS sector has contributed to a significant increase in competition in the mobile telephony market since the first broadband PCS providers were licensed five years ago.¹⁴⁰ However, broadband PCS has not yet achieved the same level of geographic coverage or subscribership as cellular, particularly in smaller markets.

Narrowband PCS providers primarily offer two-way messaging and services. They compete with a rapidly proliferating array of other messaging and mobile data services, including paging and wireless Internet services.

¹³⁵ See *Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order*, 8 FCC Rcd 7700 (1993); *Amendment of the Commission's Rules to Establish New Personal Communications Services, Third Report and Order*, 9 FCC Rcd 1337 (1994).

¹³⁶ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532 (1994); *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fourth Memorandum Opinion and Order*, 9 FCC Rcd 6858 (1994); *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403 (1994).

¹³⁷ See *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 403 (1994) (*Narrowband Second Report and Order*).

¹³⁸ See *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Third Report and Order*, FCC 99-230 (rel. Aug. 31, 1999), *aff'd in part, rev'd in part*, *United States Telecom Ass'n v. FCC*, D.C. Circuit No. 99-1442 (Aug. 15, 2000).

¹³⁹ 47 U.S.C. § 309(j)(3).

¹⁴⁰ *Fifth Competition Report*, *supra*, at 28-29.

Advantages

The Part 24 rules provide the basic regulatory structure necessary for the orderly assignment and use of PCS spectrum, while otherwise affording licensees substantial flexibility to determine what technology, type of service, and business strategy they will use. The Part 24 competitive bidding rules promote efficient licensing of PCS spectrum to those entities that value it the most.

Disadvantages

The Part 24 rules impose limited administrative and technical burdens that are inherent in the licensing process and compliance with technical and operational rules.

Recent Efforts

In an order adopted May 5, 2000, the Commission revised its narrowband PCS rules to eliminate certain regulatory burdens and afford narrowband PCS licensees greater flexibility than was provided under the original Part 24 rules.¹⁴¹ Specifically, the Commission: (1) provided for use of larger licensing areas for the remaining narrowband PCS spectrum; (2) eliminated the limit on aggregation of narrowband PCS licenses; (3) eliminated technical restrictions and eligibility limitations on paging response channels; (4) adopted a “substantial service” alternative to existing construction and minimum coverage requirements; and (5) adopted partitioning and disaggregation rules.

On June 7, 2000, the Commission initiated a rulemaking to consider possible modifications to its entrepreneur eligibility rules for the C and F blocks in anticipation of the auction later this year of C and F block spectrum that has reverted to the Commission.¹⁴² On August 29, 2000, the Commission released the Sixth Report and Order and Order on Reconsideration in WT Docket No. 97-82, in which it reconfigured the available C block licenses into 10 MHz blocks and removed the entrepreneur eligibility restrictions with respect to certain reconfigured C block licenses and all F block licenses.¹⁴³

Recommendation

In general, the Part 24 rules are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for such rules is also not significantly affected by changes in the level of competition in PCS or in wireless services generally. Therefore, with certain exceptions noted below, the staff concludes that significant modification or repeal of the licensing and technical rules in Part 24 is not necessary at this time.

Part 24 contains two subparts (subparts G and I) that set forth “interim application, licensing, and processing rules” for narrowband and broadband PCS, respectively. Many of these rules appear to be duplicative of the consolidated Part 1, subpart F rules that establish licensing procedures for

¹⁴¹ See *Narrowband Second Report and Order*, 10 FCC Rcd at 403.

¹⁴² See *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, *Further Notice of Proposed Rule Making*, FCC 00-197 (rel. June 7, 2000).

¹⁴³ *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Sixth Report and Order and Order on Reconsideration*, FCC 00-313 (adopted August 23, 2000; released August 28, 2000).

all wireless services. In addition, a number of the competitive bidding provisions in Part 24 have been superseded by recent amendments to the general competitive bidding rules of Part 1, subpart Q. For example, Part 24 provisions addressing (1) competitive bidding design, (2) withdrawal, default and disqualification penalties, and (3) upfront, down and installment payments, have been replaced by updated provisions in Part 1, subpart Q. Therefore, the continued presence of service-specific auction rules in Part 24 appears to be redundant. The staff recommends that consideration be given to eliminating or phasing out these rules.

PART 25 – SATELLITE COMMUNICATIONS

Description

Part 25 was issued pursuant to the authority contained in section 201(c)(11) of the Communications Satellite Act of 1962, as amended, section 501(c)(6) of the International Maritime Satellite Telecommunications Act, and titles I through III of the Communications Act of 1934, as amended. Part 25 sets out the rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and technical operations.

Part 25 is organized into seven lettered sub-parts:

- A – General
- B – Applications and Licenses
- C – Technical Standards
- D – Technical Operations
- E – Reserved
- F – Competitive Bidding Procedures for DARS
- G – Reserved
- H – Authorization to Own Stock in the Communications Satellite Corporation
- I – Equal Employment Opportunities

Purpose

Part 25 provides rules under which the Bureau licenses systems to provide various satellite services. The rules are designed to accommodate efficiently the maximum number of systems possible for each type of service, to enhance competition for satellite services and the terrestrial services with which they compete. Sections of Part 25 also have provisions: (1) to protect against impermissible levels of interference; (2) to assure compliance with international agreements and treaties; (3) to assure the timely construction and operation of authorized earth stations and the timely construction, launch and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; and (5) to assure compliance with license specifications and conditions as well as with Commission rules and regulations. In addition, Part 25 provides competitive bidding procedures for the provision of DARS services, and specifies the procedure by which the Commission authorizes the purchase of stock in COMSAT. Part 25 also provides for preemption of local zoning of earth stations, unless the reasonableness of the regulation can be demonstrated.

Analysis

Status of Competition

The satellite services regulated by Part 25 are fully competitive on most routes. There are four major satellite service providers and several smaller providers that are licensed to provide state-of-the-art satellite telephony and data services to U.S. consumers and consumers worldwide. On many routes, satellite telephony and data services are offered by several satellite providers. In addition, these satellite service providers face competition from terrestrial service providers for some services on some routes. The Commission's rules and policies have led to the competitive industry that we see today by encouraging satellite companies to "pack" the satellite orbits and

maximize the use of frequencies available at those orbital locations. Part 25 rules also provide licensing mechanisms for future entry and further competition in these services. The rules also contain criteria to permit foreign entry into the U.S. markets to further compete for U.S. consumers.

Advantages

General Applications Filing Requirements: Part 25 provides clear procedures for filing applications, and predictable procedures for evaluating whether applications are complete. Part 25 also provides clear and predictable procedures for amendments, modifications, assignments and transfers. In addition, section 25.120 provides effective procedures for handling applications for special temporary authorization when delay would seriously prejudice the public interest. This allows for a more efficient use of resources.

Earth Stations: Sections 25.130 through 25.137 include procedures that allow for a frequency coordination analysis to reduce interference and the verification of earth station antenna performance standards. These clear procedures minimize the cost associated with reducing interference. Provisions in Part 25 also assure compliance with international agreements and treaties. Section 25.133 includes requirements for the timely construction and operation of earth stations. By reducing the likelihood that resources will be allocated to “phantom” ventures, section 25.133 assures that unnecessary costs were not imposed on other services that would have been limited by the need for coordination to reduce interference with systems that are, in fact, not implemented.

Space Stations: Sections 25.140 through 25.145 include conditions to facilitate coordination to avoid harmful interference to other systems. These sections also outline conditions for qualification as an applicant, which enhances the likelihood that the proposed systems will be constructed, launched and operated if licensed. These conditions reduce the likelihood that unnecessary costs will be imposed on other services through coordination to reduce interference. Section 25.140 also includes limitations on the number of orbital locations that can be assigned to each applicant, thereby fostering competition and reducing the likelihood of anti-competitive behavior.

Processing of Applications and Forfeiture, Termination, and Reinstatement of Station

Authorizations: Sections 25.150 through 25.163 include well-defined procedures for processing applications to determine whether the applications are mutually exclusive. These sections also maximize compliance with Commission rules and minimize enforcement costs.

Subpart C—Technical Standards and Subpart D—Technical Operations: These subparts provide clear and predictable technical standards and operating rules to minimize interference.

Subpart F—Competitive Bidding Procedures for DARS: This subpart describes a mechanism for competitive bidding for satellite DARS service. Competitive bidding promotes competition and awards DARS licenses to those firms that will most efficiently use those resources to compete in providing service. Competitive bidding is more efficient than other forms of assignment.

Subpart H—Authorization to Own Stock in the Communications Satellite Corporation: These rules provide the procedure for the administration of section 304 of the Communications Satellite Act of 1962. With the signing of the ORBIT Act Pub. Law No. 106-180, 114 Stat. 4B (2000), earlier this year, section 304 of the Communications Satellite Act of 1962 ceases to be effective.

Subpart I—Equal Employment Opportunities: This section promotes diversity in employment and creates opportunities.

Disadvantages

Earth Stations: Some limitations included in these rules might hamper the introduction of new services. For example, it may be possible to relax the threshold technical rules that trigger inter-system coordination among satellite service providers and reduce the burden on coordinating new and innovative satellite technologies.

Space Stations: Section 25.140 requires a demonstration that an applicant is legally, financially, technically and otherwise qualified to proceed expeditiously to operate the proposed space station, and outlines the information required to make this demonstration. If the qualifications are too restrictive, some applicants that would be able to offer service expeditiously would be eliminated from the pool of potential satellite service providers, which may result in reduced competition. In addition, section 25.140 limits the allocation of orbital slots to each applicant, which can restrict the introduction of new services. The radio-determination satellite service spectrum described in section 25.141 has been reallocated to MSS, and the rules in this section no longer serve any purpose. Section 25.144 includes licensing provisions for satellite digital audio radio service, and specifies the applicants eligible for the auction. This rule, too, serves no purpose because the auction has already been held and the pool of applicants is overtaken by events.

Processing of Applications and Forfeiture, Termination, and Reinstatement of Station

Authorizations: The preparation of applications and the delay associated with public comment periods and the examination of applications can be costly to applicants.

Subpart C—Technical Standards and Subpart D—Technical Operations: These standards and operating rules, while preserving the operating environment today, could hamper the introduction of new services and restrict alternative uses of resources in the future.

Subpart F—Competitive Bidding Procedures for DARS: Satellite services in unplanned frequency bands require international coordination prior to the commencement of operations. The value of the orbital location resource is uncertain if the international coordination process has not yet been completed.

Subpart H—Authorization to Own Stock in the Communications Satellite Corporation: These rules ceased to be effective with the recent signing of the ORBIT Act.

Subpart I—Equal Employment Opportunities: Rules in this section might increase operating costs.

Recent Efforts

As described in the staff report, the Commission has taken and continues to take steps to streamline both the earth station and space station portions of its satellite licensing process and to provide earth station applicants with greater flexibility. The staff is reviewing the technical and operational standards contained in Part 25.

Recommendation

The staff recommends further streamlining of its earth station and space station licensing processes. The staff recommends that the Commission commence a *Notice of Proposed Rulemaking (NPRM)* seeking comment on industry proposals for comprehensive changes in the earth station licensing process. It also recommends that the Commission seek comment on requiring electronic filing, which could save substantial time in processing applications. In addition, the staff recommends that the Bureau continue working with industry to re-examine the entire satellite network licensing process.

Furthermore, the staff recommends repealing section 25.141 and subpart H of the Commission's rules. The staff recommends review of the financial qualification rules in section 25.140 to determine if the financial qualification rules are necessary, and if a different showing of financial qualification might be appropriate.

PART 26 – GENERAL WIRELESS COMMUNICATIONS SERVICES

Description

Part 26¹⁴⁴ contains licensing, technical, and operational rules for General Wireless Communications Services (GWCS) in the 4660-4685 MHz band. The rules in this part: (1) define permissible communications; (2) establish license terms and parameters; (3) establish minimum technical standards and limits on operation (*e.g.*, antenna height, emission limits) to prevent interference; (4) define GWCS service areas; and (5) set forth application procedures and competitive bidding rules for the auction and award of GWCS licenses.

The Commission adopted the Part 26 rules in the 1995 *GWCS Second Report and Order*.¹⁴⁵ The rules allow GWCS licensees to provide any fixed or mobile communications service on their assigned spectrum. Broadcasting, radiolocation, and satellite services are prohibited. However, as discussed below, no licenses have been awarded in the service, the 4660-4685 MHz band has since been reclaimed by the federal government, and the Commission has proposed to delete the Part 26 rules.

Purpose

The purpose of the Part 26 rules is to establish basic ground rules for assignment of spectrum in Part 26 services, to ensure efficient spectrum use by licensees, and to prevent interference.

Analysis

Status of Competition

No licenses have been awarded in the GWCS service. The Commission contemplated that GWCS would accommodate a variety of fixed and mobile service uses, such as voice, video and data transmission, private microwave, broadcast auxiliary, and ground-to-air voice and video.¹⁴⁶ In April 1998, however, the Wireless Telecommunications Bureau postponed the GWCS auction scheduled for May 27, 1998 due to a lack of demand for licenses in the 4660-4685 MHz band.¹⁴⁷ The lack of demand appeared to result from the relatively small size of the spectrum block and from potential interference problems due to U.S. Navy use of adjacent spectrum.

Advantages

Not Applicable.

Disadvantages

Not applicable.

¹⁴⁴ 47 C.F.R. Part 26.

¹⁴⁵ *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, Second Report and Order*, 11 FCC Rcd 624 (1995) (*GWCS Second Report and Order*).

¹⁴⁶ *Id.*, 11 FCC Rcd at 630-31, ¶ 12.

¹⁴⁷ Wireless Telecommunications Bureau Announces Postponement of GWCS Auction, *Public Notice*, Report No. AUC-98-19-B (Auction No. 19), DA 98-792, (rel. Apr. 24, 1998).

Recent Efforts

On March 30, 1999, the Department of Commerce notified the Commission that the Federal Government was reclaiming the 4635-4685 MHz band and identified the 4.9 GHz band as substitute spectrum for private sector use.¹⁴⁸ Accordingly, on February 23, 2000, the Commission adopted a *Notice of Proposed Rulemaking* in WT Docket No. 00-32 proposing to eliminate the GWCS rules and delete Part 26.¹⁴⁹ In the *Notice*, the Commission states that it will allocate and establish licensing and service rules for the 4.9 GHz band as substitute spectrum.¹⁵⁰ In the *Notice*,¹⁵¹ the Commission also proposes to license the 4.9 GHz band under Part 27 of the Commission's Rules.¹⁵²

Recommendation

In light of the Commission's pending proposal in WT Docket No. 00-32 to delete the Part 26 rules, the staff makes no recommendations with respect to these rules.

¹⁴⁸ Letter to the Honorable William E. Kennard, Chairman, Federal Communications Commission, from Larry Irving, Assistant Secretary for Communications, U.S. Department of Commerce (Mar. 30, 1999).

¹⁴⁹ *The 4.9 GHz Band Transferred From Federal Government Use, Notice of Proposed Rulemaking*, 15 FCC Rcd 4778 (2000).

¹⁵⁰ *Id.*, Appendix A.

¹⁵¹ *Id.*, ¶ 2.

¹⁵² 47 C.F.R. Part 27. Because Part 26 applies only to the 4660-4685 MHz band, we propose to delete Part 26 of the Commission's Rules containing General Wireless Communications Services (GWCS) rules. 47 C.F.R. Part 26.

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

Description

Part 27¹⁵³ contains licensing, technical, and operational rules for the Wireless Communications Services (WCS) and for other new wireless services. The rules in this part: (1) define WCS license areas; (2) specify the frequencies available to WCS licensees; (3) establish license terms and operational parameters; (4) establish minimum technical standards and limits on operation (e.g., antenna height, power limits) to prevent interference; and set forth application procedures and competitive bidding rules for the auction and award of WCS licenses.

Part 27 is divided into six sub-parts:

- A – General Information
- B – Applications and Licenses
- C – Technical Standards
- D – Competitive Bidding Procedures for WCS
- E – Application, Licensing and Processing Rules for WCS
- F – Competitive Bidding Procedures for the 747-762 MHz and 777-792 MHz Bands

The Omnibus Consolidated Appropriations Act (1997) directed the Commission to reallocate the 2305-2320 and 2345-2360 MHz bands to wireless services and, among other things, to promote the most efficient use of the spectrum.¹⁵⁴ On February 19, 1997, the Commission adopted a *Report and Order* establishing the Wireless Communications Service (WCS) in these bands and establishing the Part 27 rules.¹⁵⁵ Pursuant to these rules, WCS licenses were auctioned in 1998.

More recently, the Commission has amended Part 27 to add new rules for wireless services that will operate in the 747-762 MHz and 777-792 MHz bands (700 MHz services). In the *700 MHz First Report and Order*, released on January 7, 2000, the Commission adopted rules for the 700 MHz services that provide for the broadest possible use of this spectrum, consistent with principles of sound spectrum management.¹⁵⁶ However, the Commission also noted that the 746-806 MHz band has historically been used exclusively by television stations (Channels 60-69). These incumbent broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television.¹⁵⁷

¹⁵³ 47 C.F.R. Part 27

¹⁵⁴ 47 U.S.C. § 309(j).

¹⁵⁵ *See Amendment of the Commission's rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order*, 12 FCC Rcd 10785 (1997) (*WCS Report and Order*), *recon. Memorandum Opinion and Order*, 12 FCC Rcd 3977 (1997).

¹⁵⁶ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, First Report and Order*, 15 FCC Rcd 476 (2000).

¹⁵⁷ *See* 47 U.S.C. § 337(e). *See Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, Reconsideration of Fifth Report and Order*, 13 FCC Rcd 6860, 6887 (1998).

Purpose

The purpose of the Part 27 rules is to establish basic ground rules for assignment of spectrum with respect to Part 27 services, to ensure efficient spectrum use by licensees, and to prevent interference. In addition, Part 27 contains rules that define eligibility for small business status within these blocks. These provisions implement the objectives of section 309(j)(3) of the Act that the distribution of licenses not be excessively concentrated, and that small businesses, rural telephone companies, and businesses owned by women and minorities have opportunities to participate in the provision of WCS and other wireless services.

Analysis

Advantages

The Part 27 rules provide a clear, predictable structure for the assignment and use of spectrum while allowing for maximum service flexibility. The service rules follow a flexible, market-based approach that affords maximum flexibility to licensees to decide on development and deployment of new telecommunications services and products to consumers. The rules also ensure that licensees are not constrained to a single use of this spectrum and, therefore, can offer a mix of services and technologies to their customers.¹⁵⁸

Disadvantages

The Part 27 rules impose limited administrative and technical burdens that are inherent in the licensing process and compliance with technical and operational rules.

Recent Efforts

In the *700 MHz Further Notice of Proposed Rulemaking*, released on June 30, 2000, the Commission has sought comment on specific issues relating to possible voluntary relocation of broadcast incumbents out of the 700 MHz band.¹⁵⁹

On March 30, 1999, the Department of Commerce notified the Commission that the Federal Government was reclaiming the 4635-4685 MHz band and identified the 4.9 GHz band as substitute spectrum for private sector use.¹⁶⁰ Accordingly, on February 23, 2000, the Commission adopted a *Notice of Proposed Rulemaking* in WT Docket No. 00-32, proposing to allocate and establish licensing and service rules for the 4.9 GHz band as substitute spectrum.¹⁶¹ In the *Notice*, the Commission proposed to license the 4.9 GHz band under the Part 27 rules.

¹⁵⁸ *WCS Report and Order*, 12 FCC Rcd 10785 at ¶ 26 (1997).

¹⁵⁹ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Carriage of the Transmissions of Digital Television Broadcast Stations, Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-83, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00-224, (June 30, 2000).

¹⁶⁰ Letter to the Honorable William E. Kennard, Chairman, Federal Communications Commission, from Larry Irving, Assistant Secretary for Communications, U.S. Department of Commerce (Mar. 30, 1999).

¹⁶¹ *The 4.9 GHz Band Transferred From Federal Government Use, Notice of Proposed Rulemaking*, 15 FCC Rcd 4778 (2000).

Additionally, the Commission proposed to codify and conform certain rules for the 2.3 GHz band to provide for consistent regulation of Part 27 services.¹⁶²

Recommendation

The staff recommends retaining the Part 27 rules.

¹⁶² *Id.*

PART 32 – UNIFORM SYSTEM OF ACCOUNTS

Description

Section 220 of the Communications Act of 1934, as amended, requires the Commission to prescribe a uniform system of accounts for telephone companies.¹⁶³ Part 32 of the Commission's rules implements section 220's mandate and contains the Uniform System of Accounts ("USOA") for incumbent local exchange carriers.¹⁶⁴ The USOA is an historical financial accounting system that discloses the results of operational and financial events in a manner that enables both the companies' management and policy-making agencies to assess these results. The financial accounts of a company are used to record, in monetary terms, the company's basic transactions. Like any accounting system, the Part 32 USOA consists of a chart of accounts that can be used to prepare balance sheets, income statements, and other financial reports. To reflect what happens within the telecommunications industry on a consistent and continuing basis, the Part 32 USOA uses standard accounts and methods for preparing such accounts.

Part 32 is organized into seven lettered sub-parts:

- A – Preface
- B – General Instructions
- C – Instructions for Balance Sheet Accounts
- D – Instructions for Revenue Accounts
- E – Instructions for Expense Accounts
- F – Instructions for Other Income Accounts
- G – Glossary

On a substantive level, the Part 32 USOA performs four general functions. First, the Part 32 USOA sets forth a standardized chart of accounts and thereby directs companies how to record certain transactions in their books of account. Second, the Part 32 USOA establishes rules for a carrier's affiliate transactions. Third, the Part 32 USOA specifies accounting treatment for depreciation expenses. Finally, the Part 32 USOA requires carriers to maintain property records of all telecommunications plant in service.

Purpose

The Part 32 USOA acts as a nonstructural safeguard to prevent an incumbent LEC from exercising its market power. Specifically, through standardized accounting procedures, the Part 32 USOA helps ensure that ratepayers of regulated services do not bear the costs and risks associated with an incumbent LEC's competitive operations. In addition, the Part 32 USOA restrains an incumbent LEC's ability to charge monopoly prices because it provides ratepayers with information that can be used to pursue a complaint against unjust and unreasonable rates.

The USOA also provides the Commission, state commissions, ratepayers, consumer advocates, the financial community, and others with large carriers' financial performance results that are ultimately reflected in their rates for telecommunications services. By providing a standardized means for analyzing an incumbent LEC's performance, the Part 32 USOA is a tool for the Commission's comparative analysis regulatory technique. The Commission implemented the

¹⁶³ 47 U.S.C. § 220.

¹⁶⁴ 47 C.F.R. Part 32.

Part 32 USOA in large part to reduce the need for costly and time-consuming special studies that carriers performed for policy-making purposes, while at the same time to provide the Commission and others with information used to make decisions regarding telecommunications competition, universal service, separations, access charges, and other policy issues.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

As a nonstructural safeguard, the Part 32 USOA is a lower-cost alternative to structural separation as a means for preventing an incumbent LEC from exercising its market power.¹⁶⁵ With its level of accounting detail, the Part 32 USOA deters cost misallocations by providing the initial information needed to identify cross-subsidization. In this way, regulated services are protected from bearing the costs of an incumbent LEC's competitive operations.

The Part 32 USOA clearly specifies the incumbent LEC's chart of accounts and the manner in which the carrier prepares such accounts. The standardized approach lowers the Commission's costs of monitoring the industry and enforcing its rules. Because the Part 32 USOA incorporates Generally Accepted Accounting Principles ("GAAP"), Part 32 reduces the carriers' cost of complying with the Commission's rules.

Working in tandem with the Part 43 reporting requirements, the Part 32 USOA is a low-cost means to gather information in the market about financial performance of large incumbent LECs.¹⁶⁶ Policy-makers, ratepayers, and others can then use an incumbent LEC's accounting information to make more informed decisions. The information is also used to support a viable and sufficient system of universal service support. Finally, disclosure enables ratepayers to pursue complaints regarding unjust and unreasonable rates, and therefore lowers the Commission's costs of enforcing the Act.

Disadvantages

The Part 32 USOA may increase an incumbent LEC's cost of performing internal accounting services because it establishes record-keeping requirements and accounting procedures (*e.g.*, depreciation studies) that may not be necessary in a competitive environment. Because the Commission intended for Part 32 USOA to deter cross-subsidization largely in a rate-of-return environment, it established a level of accounting detail that serves as a starting point in identifying cross-subsidization. As a result of competitive developments during the 1990s, Part

¹⁶⁵ See *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 17539 (1996).

¹⁶⁶ The reporting threshold is modified annually to adjust for inflation. The current reporting threshold is \$114 million, so that only carriers with \$114 million or more in annual operating revenues report their Part 32 USOA results in the Automated Reporting Management Information System ("ARMIS") program.

32 may impose more burdensome information requirements on incumbent LECs than needed in light of the changing competitive landscape.

Recent Efforts

The Commission revised its Part 32 rules during the 1998 Biennial Regulatory Review.¹⁶⁷ In that proceeding, the Commission substantially streamlined its accounting requirements for mid-sized incumbent LECs. The Commission also reduced accounting requirements on all incumbent LECs by eliminating certain accounts.

Through the on-going Comprehensive Review proceeding, the Commission is streamlining its Part 32 accounting rules as the industry becomes increasingly competitive. The Comprehensive Review involves a two-phase approach during which the Commission is soliciting the views of the states, the industry, and the public in a series of public workshops (as well as through standard notice-and-comment cycles).

In Phase 1 of the Comprehensive Review, the Commission addressed accounting and reporting reform issues that could be implemented without delay. In the *Phase 1 Order*, which the Commission released in March 2000, the Commission substantially reduced the level of accounting detail required in certain reports, eliminated pre-notification requirements, relaxed the cost allocation manual audit requirements, and streamlined a number of ARMIS reporting requirements.¹⁶⁸

In Phase 2, the Commission will look to reducing accounting and reporting requirements for incumbent LECs as the industry becomes more competitive. Phase 2 of the Comprehensive Review started in December 1999. During the first quarter of 2000, Commission and state participants met numerous times to discuss the issues of most interest to all parties. A series of five public workshops commenced on April 5, 2000. These workshops provide an opportunity for all interested parties, state commissions, incumbent LECs, interexchange carriers, CLECs, and consumers to voice their opinions on accounting and reporting reform.

Recommendation

Pursuant to the Commission's comprehensive review of its accounting requirements, which it initiated in 1999, the staff recommends substantial reductions in the Commission's accounting requirements. These regulatory changes are responsive to the competition that has developed in recent years. For example, the staff recommends reducing the chart of accounts,¹⁶⁹ modifying expense limits,¹⁷⁰ eliminating outdated accounts,¹⁷¹ and exempting certain transactions from the

¹⁶⁷ See *1998 Biennial Regulatory Review – Review of Accounting and Cost Allocation Requirements, Report and Order in CC Docket No. 98-81, Order on Reconsideration in CC Docket No. 96-150, Fourth Memorandum Opinion and Order in AAD File No. 98-43*, 14 FCC Rcd 11396 (1999).

¹⁶⁸ *Phase I Order*

¹⁶⁹ See, e.g., 47 C.F.R. §§ 32.5110, 5111, 5112, 5120, 5122, 5123, 5124, 5125, 5126, 5129, 5160, 5169, 5301, 5302, 7600, 7610, 7620, 7630, 7640.

¹⁷⁰ See 47 C.F.R. § 32.2000.

¹⁷¹ See e.g., 47 C.F.R. §§ 32.2211 (analog switching account), 2215 (electro-magnetic switching account).

affiliate transactions rules.¹⁷² As the telecommunications industry becomes increasingly competitive, the Commission should consider further reducing accounting requirements.

¹⁷² See 47 C.F.R. § 32.27.

PART 36 – JURISDICTIONAL SEPARATIONS PROCEDURES

Description

In 1930, the Supreme Court, in the case of *Smith v. Illinois*, recognized the system of state and federal regulation of telecommunications, concluding that because interstate calls originate and terminate over local exchange plant, interstate charges should reflect some portion of the cost of local plant.¹⁷³ The Part 36 jurisdictional separations rules are part of the Commission's present-day implementation of that decision. The Part 36 rules contain procedures and standards for dividing telephone company investment, expenses, taxes and reserves between the state and federal jurisdictions. In addition to allocating costs between the federal and state jurisdictions, Part 36 also serves a universal service function. Specifically, Part 36 permits carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction and to recover those costs through the high-cost universal service support mechanism, thus making intrastate telephone service in high-cost areas more affordable.

Part 36 is organized into 7 lettered sub-parts:

- A – General
- B – Telecommunications Property
- C – Operating Revenues and Certain Income Accounts
- D – Operating Expenses and Taxes
- E – Reserves and Deferrals
- F – Universal Service Fund
- G – Lifeline Connection Assistance Expense Allocation

Purpose

Part 36 is intended to recognize the dual system of telecommunications regulation, with interstate calling regulated at the federal level. Part 36 is intended to ensure that incumbent LECs are able to recover a portion of local exchange costs through interstate rates, since interstate long distance calls originate and terminate over these facilities. It is also intended to prevent incumbent LECs from recovering the same costs through both interstate and intrastate rates. The additional interstate cost allocation for high-cost areas is intended to foster universal service by ensuring that local exchange rates in such areas remain generally affordable.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

The existing Part 36 separations rules facilitate state and federal common carrier rate regulation by dividing incumbent LEC costs between the two jurisdictions. The division of costs between the state and federal jurisdictions is necessary for the calculation of state and federal earned rates

¹⁷³ *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930).

of return. Such earned rates of return are used in rate base rate of return regulation to determine whether earnings are excessive. In price cap regulation, an earned rate of return is also calculated for purposes of the low-end adjustment. The subpart F rules providing for an additional interstate cost allocation for high-cost areas promote universal service by keeping local exchange rates generally affordable in these areas.

Disadvantages

The current jurisdictional separations rules may be unnecessarily complex and may impose some unnecessary recordkeeping burdens on incumbent LECs.

Recent Efforts

The Commission is currently in the process of considering separations reform in conjunction with a Federal-State Joint Board, made up of federal and state commissioners. The Commission initiated this review with an Notice of Proposed Rulemaking in 1997, requesting comment on the impact on jurisdictional separations of legislative, technological, and market changes, as well as several industry proposals for separations reform.¹⁷⁴ Most of the commenting parties supported continuation of some form of separations until the local exchange market is fully competitive, although there was a wide range of interim proposals. On July 21, 2000, the Federal–State Joint Board on jurisdictional separations recommended that the Commission freeze the Part 36 plant category relationships¹⁷⁵ and the jurisdictional allocation factors on an interim basis until comprehensive reform of jurisdictional separations can be implemented.¹⁷⁶

Recommendation

The staff recommends continuation of the on-going work on jurisdictional separations reform. The staff, however, does not recommend further review of the universal service provisions contained in Part 36 in the context of the current biennial regulatory review. The staff recommends elimination of the subpart G lifeline provisions in Part 36, since they are no longer in effect and have been replaced by rules in Part 54. There are also a number of other rules in Part 36 that can be eliminated because they are applicable to specific time periods that have since passed.¹⁷⁷

¹⁷⁴ *Jurisdictional Separations Reform*, 12 FCC Rcd 22120 (1997).

¹⁷⁵ This would freeze the relative proportions of plant allocated to the various separations plant categories. Changes in the relative proportion of plant allocated to the various plant categories can change separations results if the plant categories involved are apportioned between the federal and state jurisdictions on the basis of different factors.

¹⁷⁶ *Recommended Decision, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board* CC Docket No. 80-286 FCC 00J-2 (rel. July 21, 2000).

¹⁷⁷ These provisions include 47 C.F.R. §§ 36.631(a), 36.631(b), and 36.641(b).

PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS

Description

Part 42 implements sections 219 and 220 of the Communications Act of 1934, as amended, which authorize the Commission to require communications common carriers to keep records and file reports. Part 42 sets forth rules governing the preservation of records of communications common carriers, including all accounts, records, memoranda, documents, papers and correspondence prepared by or on behalf of such carriers. It also requires non-dominant interexchange carriers to make available information concerning the rates, terms, and conditions for their services.

Purpose

Part 42 was designed to implement sections 219 and 220. Part 42 was established to facilitate enforcement of the Communications Act by ensuring the availability of carrier records needed by the Commission to meet its regulatory obligations. Part 42 is also intended to aid enforcement of criminal statutes by requiring the retention of telephone toll records. In addition, Part 42 serves the public interest by giving consumers access to information about the rates, terms, and conditions for domestic, interstate, interexchange services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers. Competition in the international services markets is also increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

By relying primarily on general instructions to guide the preservation of records, Part 42 gives regulated common carriers significant flexibility in choosing how to preserve records. This allows carriers to choose the storage media, reducing their record storage and retrieval costs. Part 42 also gives carriers flexibility in determining proper retention periods, although it specifies the retention period for toll records in order to assist law enforcement activities. Part 42 also benefits consumers by ensuring that they have access to information on carrier rates, terms, and conditions.

Disadvantages

Part 42 may increase carriers' recordkeeping costs to some extent. Requiring carriers to post information concerning their rates for domestic, interstate, interexchange services may increase the risk of tacit price collusion.

Recent Efforts

On March 31, 1999, the Commission reinstated the public disclosure requirement for domestic, interstate, interexchange long distance services in light of plans to implement de-tariffing of these services. The U.S. Court of Appeals for the D.C. Circuit recently upheld the Commission's decision to mandate de-tariffing for domestic interstate long distance service.¹⁷⁸

Recommendation

The staff recommends that Part 42 be maintained without substantial change because it provides carriers with significant flexibility while ensuring that necessary information will be available to the Commission and law enforcement officials. The staff also recommends that the public disclosure rules in Part 42 be maintained because they provide valuable information to consumers.

¹⁷⁸ *MCI WorldCom, Inc. v FCC*, 209 F.3d 132 (D.C. Cir. 2000).

PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

Description

Section 211 of the Communications Act of 1934, as amended, requires carriers to file with the Commission copies of all contracts, agreements, or arrangements with other carriers that relate to any traffic affected by the Act.¹⁷⁹ Section 219 authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.¹⁸⁰ Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.¹⁸¹

Part 43 of the Commission's rules implements these sections by establishing rules that perform three major functions. First, Part 43 prescribes general requirements and filing procedures for several reports which various carriers are required to file. These include the annual Automated Reporting Management Information System (ARMIS) reports on financial and operating data that are filed by common carriers with operating revenues exceeding an indexed revenue threshold, reports on proposed depreciation changes, reports on international telecommunications traffic, and international circuit status reports. Second, Part 43 requires that certain carriers file with the Commission copies of specified contracts, agreements and arrangements with other carriers. Third, Part 43 sets forth the Commission's International Settlements Policy, which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.

Purpose

Part 43 is intended to implement section 211. The reports required by Part 43 assist the Commission in monitoring the industry to ensure that carriers comply with the Commission's rules, and in tracking market and other industry developments, which improves the Commission's ability to identify developing regulatory issues and analyze the effects of alternative policy choices. The reports of proposed changes in depreciation rates allow the Commission to monitor the depreciation rates for dominant carriers' capital assets.¹⁸² The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy. The International Settlements Policy is designed to protect U.S. international carriers and the customers they serve from the potential exercise of market power by dominant foreign carriers, which could unilaterally set the prices, terms and conditions under which U.S. carriers are able to exchange international traffic.¹⁸³

¹⁷⁹ 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

¹⁸⁰ 47 U.S.C. § 219.

¹⁸¹ 47 U.S.C. § 220.

¹⁸² Only those carriers with annual operating expenses that equal or exceed the indexed revenue threshold defined in § 32.9000 and have been found by the Commission to be a dominant carrier with respect to communications services are required to file depreciation change reports.

¹⁸³ See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7974, ¶ 31 (1999).

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers. Competition in the international services markets is also increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The reports required by Part 43 increase the Commission's ability to ensure compliance with the Commission's rules. They also provide the Commission, other government agencies, state regulators, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developing regulatory issues and evaluating the effects of policy choices. The contract filing requirements also assist the Commission in identifying and remedying potential instances of anti-competitive conduct. The International Settlements Policy and related requirements protect U.S. carriers and their customers from the potential exercise of market power by dominant foreign carriers.

Disadvantages

Some carriers allege that certain of the required filings are unduly burdensome. Part 43 may also require the filing of some information that is unnecessarily detailed or no longer necessary in light of competitive developments.

Recent Efforts

The Commission recently revised its ARMIS reporting requirements as part of its 1998 Biennial Regulatory Review process.¹⁸⁴ The Commission reduced reporting requirements for mid-sized carriers, and improved the definitions, descriptions and instructions used in preparing ARMIS reports. The Commission adopted further streamlining measures in Phase 1 of the *Comprehensive Review* proceeding.¹⁸⁵ Currently, the staff is undertaking additional review of the ARMIS reports in Phase 2 of the *Comprehensive Review* proceeding intended to produce further streamlining.

In 1999, the Commission adopted a sweeping reform of the longstanding international settlements policy, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.¹⁸⁶ The Commission, among other things, eliminated the

¹⁸⁴ See *1998 Biennial Regulatory Review – Review of ARMIS Reporting Requirement, Report and Order*, 14 FCC Rcd 11443 (1999).

¹⁸⁵ *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent LECs: Phase 1*, CC Docket No. 99-253, *Report and Order*, FCC 00-78 (rel. Mar.8, 2000).

¹⁸⁶ See *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 (1999).

international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the international settlements policy for arrangements with all carriers on routes with rates for terminating U.S. calls that are at least 25 percent lower than the relevant settlement rate benchmark.

Recommendation

The staff recommends continuation of the ongoing efforts to streamline further the ARMIS reporting requirements. The staff also recommends modifying or eliminating some of the rules governing reports to be filed by carriers providing international telecommunications services. In particular, the staff recommends elimination of section 43.53 of the rules because the required reports regarding the division of international telegraph charges appear to be unnecessary now that telegraph service is no longer a major component of telecommunications traffic. In addition, this reporting requirement duplicates requirements in other rules. The staff also recommends that section 43.81 of the rules be removed from Part 43 since it is no longer in effect.

The staff also recommends that the Commission amend section 43.51 of the rules to simplify the language and to provide that copies of contracts for international services do not need to be filed with the Commission unless the contracts concern common carrier service between the U.S. and foreign points and involve a foreign carrier that has market power in that foreign market, or a U.S. carrier that has been classified as dominant on any routes included in the contract, for reasons other than a foreign carrier affiliation.

PART 51 – INTERCONNECTION

Description

Sections 251 and 252 of the Communications Act of 1934, as amended, were adopted as part of the 1996 Telecommunications Act. Most significantly, these provisions require that the incumbent local exchange carriers open their networks to competition, and are critical to fostering local exchange and exchange access competition as envisioned by Congress. Section 251 establishes distinct sets of pro-competitive requirements for telecommunications carriers, local exchange carriers, and incumbent local exchange carriers. Section 251 specifically provides that all telecommunications carriers have a duty to interconnect with other telecommunications carriers, among other things. Under section 251, local exchange carriers are subject to additional requirements concerning number portability, dialing parity, right-of-way access, and reciprocal compensation. In addition to these obligations, incumbent local exchange carriers are subject to further requirements concerning negotiation of agreements, interconnection, access to unbundled network elements, resale, notification of changes, and collocation.¹⁸⁷ Section 251 also provides for pricing standards and standards for incumbent carrier pricing of services offered for resale. Section 252 establishes procedures for negotiating, arbitrating, and approving interconnection agreements.¹⁸⁸ The Part 51 rules implement these statutory requirements.

Part 51 is organized into nine lettered sub-parts:

- A – General Information
- B – Telecommunications Carriers
- C – Obligations of All Local Exchange Carriers
- D – Additional Obligations of Incumbent Local Exchange Carriers
- E – Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act
- F – Pricing of Elements
- G – Resale
- H – Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic
- I – Procedures for Implementation of Section 252 of the Act

Purpose

Part 51 implements the requirements found in sections 251 and 252. Part 51 is intended to foster competition in the local exchange and exchange access markets by requiring that incumbent local exchange carriers open their networks to competition, and by establishing pricing standards applicable to the facilities and services that the incumbent local exchange carriers provide to their competitors. Consistent with section 251 of the Act, Part 51 also contains certain pro-competitive requirements that apply to all telecommunications carriers and competitive local exchange carriers.

¹⁸⁷ 47 U.S.C. § 251.

¹⁸⁸ 47 U.S.C. § 252.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

The Part 51 rules require incumbent local exchange carriers to open their networks to competition, and establish pricing standards. This fosters competition in the local exchange and exchange access markets. Competition in these markets will increase the choices available to consumers, as well as create incentives for increased efficiency and the more rapid deployment of new services and technology.

Disadvantages

The Part 51 rules impose some costs on incumbent local exchange carriers.

Recent Efforts

The Eighth Circuit Court of Appeals recently overturned certain of the pricing rules in Part 51, and remanded them to the Commission for further consideration.¹⁸⁹

Recommendation

The staff recommends continued monitoring of the development of local exchange and exchange access competition. The staff also recommends that the Commission re-evaluate the various mechanisms for intercarrier compensation for traffic origination and termination.

¹⁸⁹ *Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir. rel. July 18, 2000).

PART 52 – NUMBERING

Description

Section 251(e) of the Communications Act of 1934, as amended, adopted as part of the 1996 Telecommunications Act, governs the administration of telephone numbers. It gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Section 251(e) also requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make those numbers available on an equitable basis. It also charges the Commission with establishing cost recovery mechanisms for numbering administration arrangements and number portability.

Part 52 implements the requirements of section 251(e). It contains rules governing the administration of the North American Numbering Plan, which is the basic numbering scheme for the telecommunications networks located in the United States, its territories, and other countries in North America. Part 52 also contains rules designed to ensure that users of telecommunications services can retain, at their existing locations, their existing telephone numbers when they switch from one local exchange telecommunications carrier to another. It also contains rules governing the administration of toll free telephone numbers.

Part 52 is organized into four lettered sub-parts:

- A – Scope and Authority
- B – Administration
- C – Number Portability
- D – Toll Free Numbers

Purpose

Part 52 implements the requirements of section 251(e). The purpose of the rules in Part 52 is to establish requirements to govern the administration and efficient use of telephone numbers within the United States for provision of telecommunications services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The Part 52 rules benefit the public by fostering the efficient use of telephone numbers, which are a scarce national resource, and minimizing the potential for anti-competitive behavior. They are designed to provide clear and predictable guidelines for the use of telephone numbers while minimizing administrative costs. The number portability rules are also designed to remove

barriers to local exchange competition and reduce the consumers' costs of switching to an alternative carrier by ensuring that customers can retain their local telephone number when they switch from one local carrier to another.

Disadvantages

Carriers are required to fund the costs of administering the North American Numbering Plan.

Recent Efforts

The Commission released a Report and Order and Further Notice of Proposed Rulemaking in March 2000 addressing how to meet the increased demand for telephone numbers in light of the declining quantity of available numbers. The Report and Order adopted measures that will promote more efficient allocation and use of telephone numbers, and established policies to ensure that carriers have access to the numbering resources they need to participate in the competitive telecommunications marketplace.

The Commission also released a Report and Order in July 2000 addressing whether the current method of administering toll free numbers should be replaced by a management system more suitable to a competitive environment. The North American Numbering Council will prepare a report to the Commission on this issue within the next six months.

Recommendation

The staff recommends the retention of Part 52 and the continuation of current efforts to optimize the use of numbering resources in an impartial, economically efficient manner.

PART 53 – SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

Description

Section 272 of the Communications Act of 1934, as amended, establishes safeguards applicable to Bell Operating Company (BOC) equipment manufacturing, provision of in-region interLATA toll service, and provision of interLATA information services (other than electronic publishing and alarm monitoring).¹⁹⁰ The Commission's Part 53 rules implement these requirements. In particular, the Part 53 rules provide that the BOCs must use a separate affiliate for certain activities, and set out structural separation, transactional, and auditing requirements. The Part 53 rules also contain provisions adopted pursuant to section 271 of the Act concerning joint marketing of local exchange and long distance services.

Part 53 is organized into six lettered subparts (three of which are reserved for future use):

- A – General Information
- B – Bell Operating Company Entry into InterLATA Services
- C – Separate Affiliate; Safeguards
- D – Manufacturing by Bell Operating Companies [reserved]
- E – Electronic Publishing by Bell Operating Companies [reserved]
- F – Alarm Monitoring Services [reserved]

Purpose

Part 53 generally implements the structural safeguards mandated in section 272. These separate subsidiary and auditing requirements are designed to prevent the BOCs from using their dominance in the market for local exchange and exchange access services to compete unfairly in the related markets.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume business and residential customers than for low volume customers.

Advantages

Part 53 reduces the potential for the BOCs to engage in anticompetitive behavior by leveraging their dominance in the market for local exchange and exchange access services to compete unfairly in the markets for other goods and services.

¹⁹⁰ 47 U.S.C. § 272.

Disadvantages

Use of a structurally separate subsidiary for certain activities and compliance with the auditing requirements in Part 53 increase carrier costs.

Recent Efforts

Not applicable.

Recommendation

The staff recommends only minor changes to Part 53 at this time. In this regard, we note that much of Part 53 is statutorily mandated, including the basic requirement for the use of separate subsidiaries for certain activities and most of the structural separation and auditing requirements. Section 53.101 of the rules concerning joint marketing has sunset and should be deleted from Part 53. The section 272 provisions requiring a separate subsidiary for the provision of interLATA information services have also sunset, and the rules related to this requirement should be deleted from Part 53.

PART 54 – UNIVERSAL SERVICE

Description

Sections 214(e) and 254 of the Communications Act of 1934 direct the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.¹⁹¹ Part 54 implements these provisions of the Act. Part 54 contains rules governing the operation of the Commission's four basic universal service programs: (1) the high-cost support mechanism, which provides support to keep rates affordable in high-cost areas; (2) the low-income support mechanism, which provides support to keep rates affordable for low-income consumers; (3) the schools and libraries support mechanism, which provides support for telecommunications and Internet access and internal connections for eligible schools and libraries; and (4) the rural health care support mechanism, which provides support for telecommunications services for eligible rural health care providers. In addition, Part 54 contains administrative rules governing the collection of universal service contributions and the distribution of support, as well as provisions for the creation of the Universal Service Administrative Company (USAC) to administer the universal service support mechanisms.

Part 54 is organized into ten lettered sub-parts:

- A – General Information
- B – Services Designated for Support
- C – Carriers Eligible for Universal Service Support
- D – Universal Service Support for High Cost Areas
- E – Universal Service Support for Low-Income Consumers
- F – Universal Service Support for Schools and Libraries
- G – Universal Service Support for Health Care Providers
- H – Administration
- I – Review of Decisions Issued by the Administrator
- J – Interstate Access Universal Service Support Mechanism

Purpose

Part 54 implements the requirements found in section 214(e) and 254. Part 54 is designed to promote universal service by ensuring that all consumers, including consumers living in rural, insular, and high-cost areas as well as low-income consumers, have access to affordable telecommunications services. It is also designed to ensure that schools, libraries, rural health care providers, and the members of the public that they serve, have access to affordable telecommunications and information services. Part 54 is designed to accomplish these goals in a competitively neutral manner by collecting support from every telecommunications carrier that provides interstate telecommunications service, and by making support available on a technologically neutral basis to any eligible service provider. This is intended to encourage the provision of service by wireless and other emerging technologies that have not been eligible to receive universal service support in the past, but may prove to be efficient alternatives to traditional wireline service in high-cost and rural areas.

¹⁹¹ See 47 U.S.C. §§ 214(e), 254.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

Part 54 serves the public interest by establishing explicit universal service mechanisms to ensure that all consumers have access to affordable telecommunications services. It also promotes competition by making explicit universal service support available to any eligible telecommunications carrier in a competitively and technologically neutral manner. This also encourages efficient entry in high-cost areas. Finally, Part 54 benefits the public by making telecommunications and information services available to qualifying schools, libraries, and rural health care providers at reduced rates.

Disadvantages

The reporting requirements necessary for the collection, calculation, and disbursement of universal service support may place administrative burdens on certain carriers. The current procedures for review of USAC's funding decisions concerning schools, libraries, and rural health care providers may also place unnecessary administrative burdens on the Commission.

Recent Efforts

Many of the Part 54 rules were adopted in 1997, and they have been revised a number of times since.¹⁹² On June 30, 2000, the Commission released an order to promote telecommunications subscribership by those living on tribal lands.¹⁹³

Recommendation

The staff does not recommend any major new initiatives concerning the Commission's universal service rules as part of the 2000 Biennial Regulatory Review. The staff, however, recommends that the Commission consider modifying Part 54 to streamline the process for appeals of USAC funding decisions by requiring applicants to file appeals with USAC in the first instance unless the appeals raise new or novel questions of fact, law, or policy.¹⁹⁴ The staff also recommends certain minor revisions to the Part 54 rules to remove transitional provisions that are no longer applicable. For example, section 54.701(b)-(e), concerning the now-completed merger of the Schools & Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, should be deleted.

¹⁹² See, e.g., *Federal-State Joint Board on Universal Service, Fifth Order on Reconsideration and Fourth Report and Order*, 13 FCC Rcd 14915 (1998); *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999).

¹⁹³ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, FCC 00-208 (rel. June 30, 2000).

¹⁹⁴ See 47 C.F.R. § 54.719.

PART 59 – INFRASTRUCTURE SHARING

Description

Section 259 of the Communications Act of 1934, as amended, requires the Commission to prescribe regulations that require incumbent LECs to make available to qualifying carriers certain public switched network infrastructure, technology, information, and telecommunications facilities and functions used to provide telecommunications services, or access to information services. Part 59 implements section 259 of the Act, by specifying the general duty of incumbent LECs to share such infrastructure with qualifying carriers (*i.e.*, carriers that fulfill universal service obligations) and setting out general terms and conditions for such sharing. Part 59 applies only when the qualifying carrier does not seek to use the shared infrastructure to offer certain services within the incumbent LEC's telephone exchange area.

Purpose

Part 59 is designed to implement the requirements of section 259. Part 59 is intended to foster the provision of advanced telecommunications and information services by small carriers. It is intended to accomplish this by allowing qualifying carriers to take advantage of the economies of scale and scope possessed by larger incumbent LECs.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

Part 59 fosters the availability of advanced telecommunications and information services by articulating general rules and guidelines to define the obligations imposed by section 259 and by relying in large part on negotiations between interested parties. This negotiation-driven approach allows the parties to craft section 259 agreements that best meet their needs with minimal regulatory supervision.

Disadvantages

The rules implementing section 259 may impose costs on incumbent LECs that must share infrastructure with qualifying carriers. Part 59 minimizes these costs by relying on private negotiations to establish the precise terms for infrastructure sharing.

Recent Efforts

The Commission recently reaffirmed its negotiation-based approach to implementing section 259.¹⁹⁵

¹⁹⁵ *Order on Reconsideration, Implementation of Infrastructure Sharing Provisions of the Telecommunications Act of 1996*, 62 FR 9704 (rel. Apr. 27, 2000). This Order also addressed a number of

Recommendation

The staff recommends that the negotiation-driven, minimally-regulatory approach adopted in Part 59 be maintained and that no substantial changes be made to this Part. During the three years since Part 59 was adopted, no evidence has been presented to the Commission indicating that parties have been unable to negotiate section 259 infrastructure sharing agreements.

issues concerning the use of section 259 to facilitate resale, access to intellectual property rights, and pricing of section 259 arrangements. *Id.*

PART 61 – TARIFFS

Description

Sections 203 and 204 of the Communications Act of 1934, as amended, establish tariff filing requirements applicable to common carriers.¹⁹⁶ Sections 201 and 202 require rates, terms and conditions to be “just and reasonable,”¹⁹⁷ and prohibit “unjust or unreasonable discrimination.”¹⁹⁸ Part 61 implements these sections of the Act by establishing rules that perform two major functions. First, the Part 61 rules establish requirements governing the filing, form, content, public notice periods, and accompanying support materials for tariffs. Second, Part 61 sets forth the pricing rules and related requirements that apply to incumbent local exchange carriers (LECs) that are subject to price cap regulation.

Part 61 is organized into ten lettered sub-parts:

- A – General
- B – Rules for Electronic Filing
- C – General Rules for Nondominant Carriers
- D – General Tariff Rules for International Dominant Carriers
- E – General Rules for Dominant Carriers
- F – Specific Rules for Tariff Publications of Dominant and Nondominant Carriers
- G – Concurrences
- H – Applications for Special Permission
- I – Adoption of Tariffs and Other Documents of Predecessor Carriers
- J – Suspensions

Purpose

Part 61 is intended to implement sections 203 and 204. The Part 61 tariffing rules are designed to provide consumers with information on the rates, terms and conditions for telecommunications services. They are also intended to ensure that the carriers provide the Commission and the public with information necessary for evaluating the lawfulness of tariff rates, terms and conditions. The price cap rules in Part 61 are designed to ensure that the rates of price cap carriers are “just and reasonable” and “not unjustly or unreasonably discriminatory.” At the same time, the price cap rules, in conjunction with the Part 69 access charge rules, are designed to create incentives for increased carrier efficiency, to streamline the tariff review process, and to allow the carriers some degree of pricing flexibility.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive,

¹⁹⁶ 47 U.S.C. §§ 203-04.

¹⁹⁷ 47 U.S.C. § 201.

¹⁹⁸ 47 U.S.C. § 202.

although there is greater competition for high volume customers than for low volume customers. Competition in the international services markets is also increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The Part 61 tariffing rules benefit the public by providing information on the rates, terms, and conditions for telecommunications services. In addition, the requirements for support materials facilitate review of the lawfulness of the tariffs. The requirements for support materials thus reduce the cost of enforcing Commission pricing rules, and permit interested parties to challenge tariff provisions.

The price cap rules contained in Part 61 protect customers by capping the rates charged by the LECs and limiting the potential for LECs to exercise market power in an anticompetitive manner. They also foster carrier efficiency, streamline the tariff process, and allow the carriers some degree of pricing flexibility.

Disadvantages

The tariff filing requirements may impede competition by reducing carrier flexibility and potentially foster oligopoly pricing by requiring the public disclosure of rates, terms, and conditions. Furthermore, the requirement for tariff support materials imposes some preparation costs on the carriers. Over time, the price cap rules may reduce economic efficiency by limiting carrier pricing flexibility.

Recent Efforts

As part of the 1998 Biennial Regulatory Review process, the Commission conducted a comprehensive review of Part 61, and eliminated a number of rules that were no longer necessary.¹⁹⁹ More recently, the Commission also addressed the price cap rules in a comprehensive manner in the CALLS proceeding.²⁰⁰ In addition, the Commission is in the process of implementing mandatory de-tariffing for domestic interexchange toll service,²⁰¹ and is considering doing the same for competitive local exchange carrier services.²⁰²

Recommendation

At this time, the staff generally recommends retaining the existing Part 61 requirements, with continued monitoring of competitive developments to permit changes as warranted by increased competition. The staff recommends, however, that the Commission extend mandatory de-tariffing to the international services of non-dominant interexchange carriers, including Commercial Mobile Radio Service providers and U.S. carriers classified as dominant solely due

¹⁹⁹ *1998 Biennial Regulatory Review – Part 61 of the Commission’s Rules and Related Tariff Requirements, Report and Order and Further Order on Reconsideration*, 14 FCC Rcd 12293 (1999).

²⁰⁰ *CALLS Order*, 15 FCC Rcd 12962.

²⁰¹ *Access Charge Reform*, DA 00-1268 (rel. June 16, 2000)

²⁰² *Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14234 (1999).

to foreign affiliations. We also note that the inter-carrier compensation proceeding recommended elsewhere in this report could result in some revisions to Part 61.

**PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION,
OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF
RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

Description

Section 214 of the Communications Act of 1934, as amended, provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity require the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action.²⁰³ Part 63 of our rules sets forth specific information that must be included in a section 214 application for market entry or exit by a common carrier.²⁰⁴

Part 63 is organized into five sub-designations:

- Extensions and Supplements (§§ 63.01-63.25)
- General Provisions Relating to All Applications Under Section 214 (§§ 63.50-63.53)
- Discontinuance, Reduction, Outage and Impairment (§§ 63.60-63.100)
- Contents of Applications; Examples (§§ 63.500-63.601)
- Request for Designation as a Recognized Private Operating Agency (§§ 63.701-63.702)

Purpose

Part 63 sets out the requirements for obtaining a section 214 authorization to provide or discontinue service. A section 214 application is a request for authority to provide or to discontinue services pursuant to section 214 of the Communications Act. A carrier must receive a section 214 authorization prior to initiating or discontinuing service.

The primary purpose in adopting entry criteria under section 214 is to promote effective competition in the U.S. telecommunications services market. With regard to the construction of facilities, Commission authorization is needed to protect consumers from being charged by carriers for unneeded facilities. Commission authorization for discontinuance of service protects consumers from loss of service. Domestic markets have become sufficiently competitive that the Commission has substantially deregulated the procedures for obtaining section 214 authorizations. For international telecommunications services, the section 214 authorization requirement serves several purposes. It enables the Commission to screen applications for risks to competition and to deny or condition authorizations as appropriate. The review process also includes consultation with Executive Branch agencies on national security, law enforcement, foreign policy, and trade concerns that may be unique to the provision of international services. The section 214 authorization requirement also helps us monitor competitive conditions along U.S. international routes as well as each carrier's compliance with our rules and policies governing the provision of international services, and it also serves to inform small carriers of their special obligations as providers of international service.

²⁰³ 47 U.S.C. § 214(a).

²⁰⁴ 47 C.F.R. Part 63.

Part 63 also contains rules to protect U.S. consumers and carriers from foreign telecommunications carriers exerting market power in the U.S. telecommunications market. For example, the No Special Concessions rule prohibits U.S. international carriers from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.²⁰⁵ Part 63 also contains procedures for a party to be designated as a Recognized Private Operating Agency.²⁰⁶

Analysis

Status of Competition

There is a significant amount of competition in the provision of domestic long distance services. Competition for local exchange services is increasing. Competition in international services is also increasing, and the market is rapidly changing from a system that used to be dominated by a small number of national telecommunications providers (generally the incumbent national monopoly telephone companies) to a system with large numbers of new entrants and competitors.

Advantages

Part 63 provides carriers and the public with procedures to be followed to obtain authorization to construct facilities, provide service, and discontinue service. The rules provide certainty regarding what information must be filed with the Commission, how long action on the application will take, the types of services that can be provided over the facilities, and in what circumstances a carrier may discontinue service.

Disadvantages

The rules can be administratively burdensome on the carriers and the Commission. Some of the rules are duplicative, and some are unclear. The requirement for Commission authorization may also delay the introduction of new services to the public.

Recent Efforts

The increasing number of common carriers providing service and the resulting growth of competition have allowed the Commission to reduce the administrative burdens placed on carriers regarding market entry and exit. In 1999, the Commission amended the rules in Part 63 to deregulate market entry and streamline market exit filing requirements, under section 214, for domestic carriers.²⁰⁷ The new rules confer "blanket" section 214 certification for new lines of all domestic carriers, exempt line extensions and video programming services from section 214 requirements, and provide that all section 214 applications to discontinue domestic service will be automatically granted unless the Commission notifies the applicant otherwise. As a result of this deregulation, the only section 214 applications the Commission receives for domestic service are for market exit, under which a carrier must get discontinuance authority and notify customers

²⁰⁵ 47 C.F.R. § 63.14.

²⁰⁶ 47 C.F.R. §§ 63.701, 63.702.

²⁰⁷ *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, 14 FCC Rcd 11364 (1999).

when it stops providing service to a community. Market entry for domestic services is self-executing, and no applications are needed.

Regarding section 214 authorizations for international telecommunications services, in 1996 the Commission created global section 214 authorizations, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users.²⁰⁸ In 1999, the Commission further streamlined its procedures for granting international section 214 authorizations so that now approximately 99 percent of international section 214 applications filed qualify for streamlined processing. As a result, most new carriers are authorized to provide international services on most international routes 14 days after public notice of an application. Carriers already providing service are able to complete *pro forma* transactions and assignments of their authorizations without prior Commission approval and to provide service through their wholly owned subsidiaries without separate Commission approval. Carriers under common ownership with an already-authorized carrier are able to provide the same authorized services after only a minimal waiting period.²⁰⁹

Recommendation

The staff recommends that certain sections of Part 63 be amended or deleted, but that most of the existing sections be retained at this time. We recommend that the sections which were amended in 1999 to lower entry barriers for domestic carriers be retained because they minimize transaction costs, streamline the applications process, promote competition, and increase consumer choice. The sections related to the form of applications to be filed (*i.e.*, amendments, additional information, copies, fees, filing periods, and form (such as paper size)) should be retained because administratively they provide clear and predictable rules. We find, on the other hand, that the rules describing and defining the types of discontinuance of services for which section 214 authorization must be obtained are largely obsolete, and are duplicative, and thus recommend that they be considered for modification and consolidation. The staff has also identified several duplicative rules that should be considered for elimination, and a number of rules that are unclear, ambiguous or contain errors that the staff recommends be clarified or corrected.

²⁰⁸ *Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order*, 11 FCC Rcd 12884, (1996).

²⁰⁹ *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd 4909 (1999) (*1998 International Common Carrier Biennial Regulatory Review Order*), recon. pending.

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS, SUBPART A –
TRAFFIC DAMAGE CLAIMS**

Description

Subpart A requires carriers engaged in radio-telegraph, wire-telegraph, or ocean-cable service to maintain separate files for each damage claim of a traffic nature filed with the carrier. Subpart A also prohibits such carriers from making payments as a result of any traffic damage claim in excess of the total amount collected for the message or messages from which the claim arose unless the claim is presented in writing and sets forth the reason for the claim. These rules are based on the Commission's authority pursuant to sections 1, 4, 201-205, and 220 of the Communications Act, as amended.²¹⁰

Purpose

Subpart A requires that certain types of carriers maintain records concerning damage claims, and limits damage payments absent a written claim.

Analysis

Status of Competition

Telegraph service, which appears to be the primary focus of this subpart, is no longer a major service offering.

Advantages

Ensures that certain carriers maintain records concerning damage claims.

Disadvantages

Subpart A appears to focus on the provision of telegraph service, which is no longer a major service offering.

Recent Efforts

No recent action.

Recommendation

The staff recommends the Commission consider removing subpart A since it appears to be outdated.

²¹⁰ 47 U.S.C. §§ 151, 154, 201-205 and 220.

PART 64, SUBPART B – RESTRICTIONS ON INDECENT TELEPHONE MESSAGE SERVICES

Description

Section 223(b) of the Communications Act of 1934, as amended, prohibits use of the telephone for the purpose of obscene commercial communications. It also prohibits use of the telephone for indecent commercial communications without the consent of the other party and prohibits use of the telephone for indecent commercial communications which are available to anyone under 18 years of age.²¹¹ Section 223(b) also provides for certain defenses to prosecution for making indecent commercial communications.

Subpart B implements the provisions of section 223(b) relating to defenses to prosecution for indecent commercial communications. Under section 64.201, a provider of indecent commercial telephone communications has a defense to prosecution if the provider has notified the common carrier that the provider is engaged in providing indecent commercial communications, and does one of the following: (1) requires credit card payment before transmitting the message; (2) requires an authorized access or identification code, which has been established by mail, before transmitting the message; or (3) scrambles the message so that the audio is unintelligible and incomprehensible without a descrambler. Subpart B also provides a defense to prosecution for message sponsor subscribers to mass announcement services if they ask the carrier to take certain precautions. In addition, subpart B bars common carriers, to the extent technically feasible, from providing access to obscene or indecent communications from the telephone of anyone who has not previously requested access to such services in writing if the carrier provides billing and collection for the provider of the obscene or indecent communications.

Purpose

Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications, consistent with the First Amendment. In particular, subpart B is intended to protect minors and non-consenting adults from indecent communications.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart B protects minors and non-consenting adults from indecent commercial telephone communications within a framework designed to be consistent with the First Amendment.

Disadvantages

Restrictions affecting speech are subject to potential challenge as inconsistent with the First Amendment.

Recent Efforts

No recent developments.

²¹¹ 47 U.S.C. § 223(b).

Recommendation

The staff does not recommend changes to subpart B as part of the 2000 Biennial Review.

**PART 64, SUBPART C – FURNISHING OF FACILITIES TO FOREIGN GOVERNMENTS FOR
INTERNATIONAL COMMUNICATIONS**

Description

Subpart C, consisting of section 64.301 of the Commission's rules, requires U.S. common carriers to provide services and facilities for communications to any foreign government, upon reasonable request. If a foreign government refuses to provide services or facilities for communications to the U.S. Government, U.S. carriers, to the extent specifically ordered by the Commission, shall deny equivalent services or facilities to the foreign government.²¹² This rule was adopted pursuant to the Commission's authority under sections 201, 214, 303, and 308 of the Communications Act, as amended.²¹³

Purpose

Section 64.301 is intended to ensure that the U.S. Government has access to communications services overseas. It permits the Commission to order U.S. carriers to deny foreign governments access to communications services in the United States if the foreign government has denied the U.S. government access to communications services or facilities overseas.

Analysis

Status of Competition

Competition in the international services markets is increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The rule helps to ensure that the U.S. Government has access to communications services and facilities overseas.

Disadvantages

The Commission rarely exercises this authority.

Recent Efforts

The Commission last revised this rule in 1963, and would need to consult with the State Department before doing so again.

Recommendation

The staff recommends retaining the rule at this time.

²¹² 47 C.F.R. § 64.301.

²¹³ 47 U.S.C. §§ 201, 214, 303 and 308.

**PART 64, SUBPART D – PROCEDURES FOR HANDLING PRIORITY SERVICES IN
EMERGENCIES**

Description

Subpart D requires that common carriers maintain, provision, and, if disrupted, restore facilities and services in accordance with the policies and procedures in Appendix A to Part 64. Appendix A establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. These requirements are based on the Commission's authority under sections 1, 201-05 of the Communications Act as amended.²¹⁴

Purpose

Subpart D is designed to ensure that critical communications services are available during times of national emergency.

Analysis

Status of Competition

Not Relevant.

Advantages

Subpart D promotes public safety and national security by establishing clear procedures and criteria for ensuring that critical communications services are available in times of national emergency.

Disadvantages

Complying with these requirements may impose administrative costs on carriers.

Recent Effort

There have not been any recent actions.

Recommendation

The staff does not recommend changes in subpart D.

²¹⁴ 47 U.S.C. §§ 151, 201-05.

PART 64, SUBPART E – USE OF RECORDING DEVICES BY TELEPHONE COMPANIES

Description

Subpart E governs the use of recording devices by telephone common carriers to record interstate or foreign telephone conversations between members of the public and telephone company agents or employees. Subpart E requires that telephone companies wishing to record such conversations must: (1) obtain the prior consent of all parties; (2) give a verbal notification prior to recording; and (3) accompany the use of the recording device with an automatic tone warning device that produces a distinct signal at regular intervals. These requirements are based on the Commission's authority under sections 1, 2, 4, 201, and 205 of the Communications Act as amended.²¹⁵

Purpose

Subpart E is intended to protect privacy interests.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart E is designed to protect privacy.

Disadvantages

Subpart E appears to duplicate federal and state electronic privacy statutes, including 18 U.S.C. § 2510 *et seq.*, and 47 U.S.C. § 1004. It also references outdated technology.

Recent Effort

There have not been any recent changes.

Recommendation

The staff recommends that the Commission consider removal of subpart E.

²¹⁵ 47 U.S.C. §§ 151, 152, 154, 201 and 205.

**PART 64, SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED
CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES**

Description

Title IV of the Americans with Disabilities Act of 1990 (ADA), codified as section 225 of the Communications Act of 1934, as amended, requires the Commission to ensure that telecommunications relay service (TRS) is available, “to the extent possible and in the most efficient manner,” to individuals with hearing or speech disabilities in the United States.²¹⁶ Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to someone without such a disability.

Part 64, subpart F was adopted to implement section 225 of the Act. The rules provide minimum functional, operational, and technical standards for TRS programs. The rules also establish a cost recovery and a carrier contribution mechanism for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS.

The rules give states a strong role in ensuring the availability of TRS by treating carriers as in compliance with their statutory obligations if they operate in a state that has a relay program certified as compliant by this Commission pursuant to rules in subpart F.

Purpose

Subpart F is designed to implement section 225. Subpart F is intended to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS is available throughout the country, and by ensuring uniform minimum quality standards for such relay services.

Analysis

Status of Competition

There is competition in the interstate TRS market, but very little competition in the intrastate TRS market.

Advantages

The Commission’s TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make relay calls, regardless of where their call originates or terminates. The rules also ensure that the telecommunications service they receive is “functionally equivalent” to that available to persons who do not have such disabilities. The rules are particularly important to ensure service quality because there is so little intrastate competition among intrastate TRS providers.

Disadvantages

Technology is changing rapidly, and the regulations require relatively frequent modification to ensure functional equivalence to voice telephone service. For instance, in March 2000, the

²¹⁶ Pub. Law No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

Commission adopted rules modifying Part 64, subpart F to address the provision of new types of relay services.

Recent Efforts

In March 2000, the Commission revised subpart F to, among other things: (1) modify the definition of telecommunications relay services to include speech-to-speech (STS) relay services (which provide a telecommunications link for persons with speech disabilities), video relay interpreting (VRI), (which facilitates telecommunications for individuals who use sign language), and non-English language relay services; (2) require that all relay services, whether mandatory or voluntary, funded by intrastate and interstate TRS funds, comply with minimum service quality standards; (3) require provision of STS relay services and permit reimbursement for the voluntary provision of VRI service; (4) modify the minimum service quality standards to better ensure functional equivalency; (5) clarify that the existing rules require outreach to all callers and for all forms of TRS; and (6) improve the Commission's process for handling TRS complaints.²¹⁷

In August 2000, the Commission revised subpart F to require all carriers providing telephone voice transmission service to provide access via the 711 dialing code to all relay services as a toll free call.²¹⁸

Recommendation

The staff does not recommend modification of subpart F as part of the 2000 Biennial Review.

²¹⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-56 (rel. Mar. 6, 2000) (*Improved TRS Order*)

²¹⁸ *The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Second Report and Order*, FCC 00-257 (rel. Aug. 9, 2000) (*N11 Second Report and Order*).

**PART 64, SUBPART G – FURNISHING OF ENHANCED SERVICES AND CUSTOMER
PREMISES EQUIPMENT BY BELL OPERATING COMPANIES; TELEPHONE OPERATOR
SERVICES**

Description

Subpart G addresses two distinct sets of issues. First, it contains rules concerning the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies. Second, it contains rules governing the provision of operator services. These rules were adopted pursuant to the Commission's authority under sections 4, 201-205, 403, and 404 of the Act, as amended.²¹⁹

The Bell Operating Companies may provide enhanced services and CPE pursuant to nonstructural safeguards established in the *Computer III*²²⁰ (enhanced services) and *Furnishing of CPE*²²¹ proceedings, or through a separate subsidiary as provided in section 64.702 of the Commission's rules. If a Bell Operating Company provides enhanced services or CPE through a separate subsidiary, the separate subsidiary must: (1) obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff; (2) operate independently, with its own books of accounts, separate officers, personnel, and computer facilities; (3) deal with any affiliated manufacturing entity on an arm's length basis; and (4) compensate the Bell Operating Company for any research or development performed for the subsidiary. Section 64.702 requires that transactions between the subsidiary and the parent or any other affiliate be put in writing, and bars Bell Operating Companies from engaging in marketing or sales on behalf of a CPE or enhanced services subsidiary. The Bell Operating Company must also obtain Commission approval of the capitalization plans for any such separate subsidiary. In addition, section 64.702 bars all common carriers from providing CPE in conjunction with common carrier communications services.

The remainder of subpart G addresses the provision of telephone operator services, and certain activities by call aggregators.²²² These rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates. The rules also prohibit call blocking and require that customers be able to obtain access to the operator services provider of their choice. In addition, subpart G contains restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of informational tariffs and the provision of operator services for prison inmates

²¹⁹ 47 U.S.C. §§ 154, 201-205, 403 and 404.

²²⁰ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Report and Order, Phase I*, 104 FCC 2d 958 (1986) (subsequent citations omitted).

²²¹ *Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies*, 2 FCC Rcd 143 (1987), *aff'd sub nom., Illinois Bell Telephone Co. v. FCC*, 883 F.2d 104 (D.C. Cir.1989).

²²² Operator services refer to "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call," subject to certain exceptions. 47 C.F.R. § 64.708(i). An "aggregator" is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls, using a provider of operator services." 47 C.F.R. § 64.708(b).

Purpose

Subpart G establishes safeguards for the provision of enhanced services and CPE by Bell Operating Companies. These measures are intended to prevent the Bell Operating Companies from using their power in the local exchange market to adversely affect competition in other adjacent markets.

The subpart G rules governing the provision of operator services protect consumers by ensuring that they have access to useful information about the rates charged by operator service providers, and that they are able to reach the operator service provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls.

Analysis

Status of Competition

The markets for both enhanced services and CPE are competitive. The operator services market is becoming increasingly competitive, although consumers may not benefit fully from this competition due to a lack of consumer awareness about the choices available to them, especially when using payphones.

Advantages

Subpart G is designed to foster competition by preventing the Bell Operating Companies from using their power in the local exchange market to adversely affect competition in the provision of enhanced services and CPE. The provisions of subpart G concerning operator services are designed to protect consumers from excessive charges for such services and ensure that consumers are able to reach the interexchange carrier of their choice.

Disadvantages

The separate subsidiary requirements impose additional costs on the Bell Operating Companies. The rules concerning operator services impose some administrative costs on aggregators and operator service providers.

Recent Efforts

As part of its 1998 Biennial Review, the Commission is considering eliminating section 64.702(c), which prohibits common carriers from bundling CPE with regulated communications services. The Commission tentatively concluded that the CPE market is sufficiently competitive to justify eliminating this restriction.²²³

The Commission adopted amendments to the subpart G rules governing operator service providers on July 12, 1999. These rule changes require that aggregators update the consumer

²²³ *Policy and Rules Concerning the Interstate, Interexchange Marketplace; 1998 Biennial Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, Further Notice of Proposed Rulemaking*, FCC Rcd 21531 (1998).

information they must post on or near public telephones as soon as possible, but no later than 30 days after the aggregator changes the pre-subscribed operator service provider.²²⁴

Recommendation

The staff does not recommend further changes in subpart G as part of the 2000 Biennial Review.

²²⁴ *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-58, Second Report and Order, 14 FCC Rcd 16569 (1999).

**PART 64, SUBPART H – EXTENSION OF UNSECURED CREDIT FOR INTERSTATE AND
FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL OFFICE**

Description

Part 64 subpart H, implements section 401 of the Federal Election Campaign Act of 1971 which requires the Commission to promulgate rules governing the extension of unsecured credit for foreign or interstate communications services to candidates for Federal office.²²⁵ Part 64, subpart H requires certain carriers²²⁶ to file periodic reports with the Commission detailing the terms of any unsecured credit extended by the carrier to, or on behalf of, a candidate for federal office. In addition, subpart H requires carriers to extend unsecured credit on substantially equal terms to all candidates and other persons on behalf of any candidate for the same office.²²⁷

Purpose

The purpose of subpart H is to assist the Commission in monitoring unsecured credit arrangements between carriers and candidates for federal office, pursuant to the Federal Election Campaign Act. It is also intended to ensure that such agreements are extended on substantially equal terms to all candidates for the same office.²²⁸

Analysis

Status of Competition

Competition in the local exchange access market is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed much more rapidly than competition for residential customers or customers in rural areas. The U.S. market for domestic long distance service is competitive, although there is greater competition for higher volume business and residential customers than for low volume customers.

Advantages

The subpart H reporting requirements and limited disclosure rules provide an efficient means of monitoring unsecured credit arrangements between carriers and candidates for federal office. The rules also are designed to ensure that carriers do not favor any one candidate with regard to unsecured credit arrangements.

Disadvantages

These rules involve some additional administrative burdens for carriers.

²²⁵ 47 C.F.R. § 64.801.

²²⁶ The report filing requirement is limited to carriers with operating revenues exceeding \$1 million for the preceding year. 47 C.F.R. § 64.804 (g).

²²⁷ 47 C.F.R. § 64.804 (b)

²²⁸ Section 401, Federal Election Campaign Act of 1971, Pub. Law No. 92-225.

Recent Efforts

There have been no significant changes in recent years.

Recommendation

The staff recommends the Commission retain subpart H.

PART 64, SUBPART I – ALLOCATION OF COSTS

Description

Section 254(k) of the Communications Act, as amended, requires the Commission, with respect to interstate services, to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included within the definition of universal service bear no more than a reasonable allocation of joint and common costs of facilities used to provide these services. The requirements in subpart I are also based on the Commission's authority under sections 201 and 220 of the Communications Act, as amended.²²⁹ Subpart I of the Commission's rules prescribes procedures for the allocation of carriers' costs between regulated and non-regulated services. It provides that all incumbent LECs required to separate regulated and non-regulated costs²³⁰ shall use the attributable cost method of cost allocation and lists a number of cost allocation principles that such carriers must follow. Subpart I provides that all carriers required to allocate costs between regulated and non-regulated activities are also subject to the affiliate transactions rules. Subpart I also requires that all incumbent LECs with annual operating revenues at or above a specified indexed level (currently \$114 million) file cost allocation manuals (CAMs) with the Commission. Finally, subpart I provides that all carriers required to file CAMs must also engage independent auditors to audit their compliance with the Commission's cost allocation requirements.

Purpose

The subpart I rules are designed to implement section 254(k) and are intended to foster competition and protect consumers by preventing cross-subsidization between regulated and non-regulated services provided by carriers subject to the cost allocation requirement.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

The subpart I rules protect consumers by helping to ensure that carriers' less competitive regulated services do not subsidize competitive ventures. This also helps to prevent carriers from competing unfairly in other markets.

Disadvantages

The cost allocation and affiliate transaction rules impose administrative costs on carriers subject to these requirements.

²²⁹ 47 U.S.C. §§ 201 and 220.

²³⁰ Average Schedule companies do not do cost studies and do not perform cost allocations pursuant to Part 64, subpart I.

Recent Efforts

Subpart I has been amended within the past few years to eliminate pre-filing requirements for CAM cost apportionment and time reporting changes, and to reduce the auditing requirements for mid-sized incumbent local exchange carriers.²³¹ The Common Carrier Bureau has held workshops to discuss, among other things, proposals for additional changes to CAM requirements for mid-size carriers.²³²

Recommendation

The staff recommends that the Commission consider additional changes to CAM requirements in Phase II of the *Comprehensive Accounting Review* proceeding.

²³¹ See *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, Report and Order*, FCC 00-78 (rel. Mar. 8, 2000) (*Comprehensive Accounting Review* proceeding).

²³² Common Carrier Bureau Announces A Series of Workshops for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-754, Apr. 5, 2000, at 1. See also Common Carrier Bureau Announces Mid-Sized Carrier Workshop for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-926, Apr. 26, 2000.

PART 64, SUBPART J – INTERNATIONAL SETTLEMENTS POLICY AND MODIFICATION REQUESTS

Description

subpart J requires that carriers request Commission approval for changes in the accounting rates for international telecommunications services unless the route involved is exempt from the Commission's International Settlements Policy (ISP).²³³ The ISP requires that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.²³⁴ subpart J also sets forth the information which must be contained in a modification request and the procedures that govern Commission consideration of such requests.²³⁵ These requirements are based on the Commission's authority pursuant to sections 1, 201, 202, 203, and 309 of the Communications Act, as amended.²³⁶

Purpose

The requirement for filing accounting rate modification requests set out in Subpart J is intended to prevent the exercise of market power by foreign carriers. In particular, it assists the Commission in ensuring compliance with the ISP and the Commission's Benchmarks Policy.²³⁷ The ISP was adopted as a result of the Commission's concern that a foreign carrier with market power would have the ability to "whipsaw" competing U.S. international carriers by discriminating among them, and /or by unilaterally setting the prices, terms, and conditions under which U.S. carriers are able to exchange traffic.²³⁸ Such actions by foreign carriers would prevent U.S. carriers from obtaining lower accounting rates that would benefit U.S. consumers.

Analysis

Status of Competition

Competition in the international services markets is increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

²³³ An accounting rate is the price a U.S. facilities-based carrier negotiates with a foreign carrier for handling one minute of international traffic. Each carrier's portion of the accounting rate is referred to as the settlement rate.

²³⁴ 47 C.F.R. § 43.51(e).

²³⁵ 47 C.F.R. § 64.1001.

²³⁶ 47 U.S.C. §§ 151, 201, 202, 203 and 309.

²³⁷ The Commission has established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States. *See International Settlement Rates, Report and Order*, 12 FCC Rcd 19806 (1997), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), *Report and Order on Reconsideration and Order Lifting Stay*, 14 FCC Rcd 9256 (1999).

²³⁸ *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963, 7974 ¶ 31 (1999).

Advantages

Subpart J is designed to prevent the exercise of market power by foreign carriers, and facilitate the negotiation of lower accounting rates by U.S. international carriers to the benefit of American consumers.

Disadvantages

The subpart J requirements may be too restrictive or over-broad.

Recent Efforts

The Commission reviewed its International Settlements Policy as part of its 1998 biennial review.²³⁹ In that proceeding, the Commission made several changes to the ISP, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes. The Commission, among other things, eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the international settlements policy for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant settlement rate benchmark. The Commission also adopted procedural changes to simplify the accounting rate filing requirements, including the elimination of the requirement that carriers making accounting rate filings with the Commission serve every carrier that provides service on the international route with a copy of the filing. Instead, the Commission encouraged carriers to make their accounting rate filings electronically over the International Bureau Electronic Filing System.²⁴⁰

Recommendation

The staff does not believe that further amendments to subpart J are necessary at this time, and recommends retaining the rule.

²³⁹ *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 (1999); *see also*, FCC Announces Elimination of Existing Service Requirement in 64.1001(k), Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

²⁴⁰ *See* FCC Announces Elimination of Existing Service Requirement in 64.1001(k), Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

PART 64, SUBPART K – CHANGING LONG DISTANCE SERVICE

Description

Section 258 of the Communications Act of 1934, as amended,²⁴¹ requires the Commission to prescribe verification procedures for telecommunications carriers to use in confirming subscribers' decisions to change local exchange or long distance telephone carriers. Section 258 provides that a carrier that fails to comply with the Commission's verification procedures will be liable to the subscriber's authorized carrier for all amounts paid by the subscriber after the violation. Subpart K implements section 258 of the Act by requiring telecommunications carriers to follow specific procedures with respect to changes in subscribers' preferred carriers. The rules also absolve subscribers of liability for charges billed by unauthorized carriers in certain cases, impose liability on unauthorized carriers for all charges collected from subscribers, and establish procedures to govern preferred carrier freezes.

Purpose

Subpart K is intended to implement section 258 of the Act by attempting to eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized carrier without the subscriber's knowledge or explicit authorization. Subpart K is also designed to foster consumer choice and facilitate fair competition in the market for telecommunications services

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart K reduces fraud by deterring slamming, fosters consumer choice, and facilitates fair competition.

Disadvantages

Compliance with the safeguards in subpart K may increase carriers' costs to some degree.

Recent Efforts

In May 2000, the Commission modified the slamming liability rules and the procedures contained in subpart K.²⁴² Among other things, the Commission modified the liability rules in response to industry concerns about complexity and expense of implementation and permitted state

²⁴¹ 47 U.S.C. § 258.

²⁴² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, First Order on Reconsideration*, FCC 00-135 (rel. May 3, 2000).

regulatory commissions to become the primary forums for resolving slamming complaints. In June 2000, the D.C. Circuit lifted its May 1999 stay of the previous liability rules. The new rules will become effective later this year.

In July 2000, the Commission revised other aspects of its slamming rules to improve the carrier change process for both subscribers and carriers while making it more difficult for unscrupulous carriers to perpetrate slams.²⁴³ Among other things, the Commission allowed the authorization and verification of carrier changes using the Internet, consistent with the provisions of the Electronic Signatures in Global and National Commerce Act.²⁴⁴ The revised rules will become effective later this year.

Recommendation

The staff does not recommend further changes to subpart K as part of the 2000 Biennial Review.

²⁴³ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Third Report and Order and Second Order on Reconsideration*, FCC 00-255 (rel. Aug. 15, 2000).

²⁴⁴ S. 761, 106th Cong., 2nd Sess. (signed into law June 30, 2000).

PART 64, SUBPART L – RESTRICTIONS ON TELEPHONE SOLICITATION

Description

Section 227 of the Communications Act, as amended, imposes restrictions on the use of automatic telephone dialing systems ("autodialers"), artificial or prerecorded messages, and telephone facsimile machines, and it specifically requires that the Commission adopt rules to implement these protections.²⁴⁵ Section 227 also directs the Commission to conduct proceedings to consider the need to protect residential telephone subscribers from unsolicited telephone calls. The subpart L rules contain measures designed to implement these provisions of the statute. Among other things, the subpart L rules require that telephone solicitors maintain company-specific lists of residential subscribers who do not wish to receive further solicitations. In addition, the subpart L rules contain restrictions on the disclosure of subscriber billing name and address information.

Purpose

The subpart L rules are intended to implement section 227 of the Act, and protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart L protects subscriber privacy and public safety without unnecessarily interfering with legitimate telephone marketing.

Disadvantages

Subpart L restricts the ability of telemarketers to place unsolicited calls at will.

Recent Efforts

There have not been any significant recent actions.

Recommendation

The staff does not recommend changes in subpart L at this time.

²⁴⁵ 47 U.S.C. § 227. *See also* 47 U.S.C. § 152(b).

PART 64, SUBPART M – PROVISION OF PAYPHONE SERVICE

Description

Subpart M implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service.²⁴⁶ The subpart governs the compensation of payphone providers by carriers that receive calls from payphones, requires states to review and remove any of their regulations that limit the ability of payphone service providers to enter or exit the market, and establishes regulations designed to ensure the accessibility of payphone service to individuals with disabilities. With respect to payphone compensation, the subpart provides for contracts between providers, but sets a default compensation rate should the parties not reach an agreement. The subpart also requires carriers to establish arrangements and track the data necessary for the calculation, verification, billing, and collection of payphone compensation.

Purpose

Subpart M is designed to implement section 276 of the Act and help ensure that payphone providers receive fair compensation for completed intrastate and interstate calls that use their payphones, to encourage competition among payphone service providers, and to promote the widespread deployment of payphone services.

Analysis

Status of Competition

Incumbent local exchange carriers have significant market power in the provision of payphone service. Independent payphone providers have captured approximately fifteen percent of the payphone market.

Advantages

The payphone regulations act to restrain the market power of incumbent LECs and ensure that payphone providers are fairly compensated through a default rate.

Disadvantages

By establishing a default payphone compensation rate, the payphone rules may discourage negotiated, market-based compensation arrangements because neither side has the incentive to disadvantage itself in relation to the default rate.

Recent Efforts

The U.S. Court of Appeals for the D.C. Circuit issued a decision on June 16, 2000 upholding the Commission's decision to establish a default compensation rate of \$.24 per call for payphone calls.²⁴⁷

²⁴⁶ See 47 U.S.C. § 276.

²⁴⁷ *American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000).

Recommendation

The staff recommends retention of the payphone rules, but recommends continued monitoring to assess future competitive developments in the payphone market. The staff recommends deletion of section 64.1320, which applies only to activities prior to January 1, 1999.

PART 64, SUBPART N – EXPANDED INTERCONNECTION

Description

Subpart N provides that Class A local exchange carriers, which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection.²⁴⁸ Subpart N requires that these incumbent LECs allow interconnection with their networks through physical or virtual collocation for the provision of interstate special access and switched transport services. Any interested party may take expanded interconnection. Subpart N was adopted pursuant to the Commission's authority under Sections 1, 4, and 201 through 205 of the Communications Act, as amended.²⁴⁹

Purpose

Subpart N is designed to increase competition in the provision of interstate services by removing barriers to the competitive provision of special access and switched transport services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart N fosters competition in the provision of special access and switched transport services. In particular, subpart N makes collocation and interconnection available to a broader group of interested parties than section 251 of the Communications Act and Part 51 of the Commission's rules. Any interested party, including end users such as large businesses and universities, for example, can take advantage of expanded interconnection under subpart N, while interconnection and collocation under section 251 of the Communications Act and Part 51 of the Commission's rules are limited to telecommunications carriers.

Disadvantages

Subpart N imposes some costs on incumbent LECs, which are passed on to requesting parties.

Recent Efforts

No recent action.

²⁴⁸ Bell South, SBC, USWest and Verizon are subject to this requirement.

²⁴⁹ 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff recommends that the Commission retain subpart N because it covers more interested parties than section 251 of the Act and Part 51 of the rules, and serves to promote competition.

PART 64, SUBPART O – INTERSTATE PAY-PER-CALL AND OTHER INFORMATION SERVICES

Description

Subpart O contains provisions concerning pay-per-call and certain other information services. Subpart O requires that common carriers assigning telephone numbers to providers of interstate pay-per-call services require that the provider comply with this subpart as well as certain other laws and regulations. Subpart O restricts the provision of pay-per-call services over 800 and other “toll free” numbers, and effectively bars the provision of interstate pay-per-call services on a collect basis. Subpart O provides for the assignment of the 900 service access code to pay-per-call services. It requires that local exchange carriers offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O also bars the disconnection or interruption of local exchange or long distance service for the non-payment of charges for interstate pay-per-call and certain information services. In addition, subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services. The requirements in subpart O are based on the Commission’s authority under Sections 1, 4, and 201 through 205 of the Communications Act, as amended.²⁵⁰

Purpose

Subpart O is designed to protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart O protects consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Disadvantages

Compliance with the requirements of subpart O increases the cost of providing pay-per-call services.

Recent Efforts

There have not been any recent actions.

²⁵⁰ 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff does not recommend changes to subpart O as part of the current biennial review.

PART 64, SUBPART P – CALLING PARTY TELEPHONE NUMBER; PRIVACY (ALSO KNOWN AS “CALLER ID”)

Description

Subpart P contains the Commission’s rules concerning Calling Party Number (CPN) services, including “Caller ID,” which depend on capabilities that use out-of-band signaling techniques, such as Signaling System Seven (SS7). Subpart P provides that common carriers using SS7 must, subject to certain exceptions, transmit the CPN associated with interstate calls to interconnecting carriers without additional charge. Originating carriers using SS7 must recognize *67 as a caller’s request for privacy when dialed as the first three digits of an interstate call. Carriers providing line blocking services are required to recognize *82 as a caller’s request that privacy not be provided and that the CPN be passed on an interstate call. Subpart P restricts the use of telephone subscriber information provided as part of Automatic Number Identification or Charge Number services. Carriers are also required to notify customers of their *67 and *82 capabilities. The requirements in subpart P are based on the Commission’s authority under sections 1, 4, and 201 through 205 of the Communications Act, as amended.²⁵¹

Purpose

Subpart P provides a clear and consistent regulatory framework for deployment of CPN-based services which protects subscriber privacy while fostering the development of new and innovative services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart P protects the privacy interests of telephone users, and provides for consumer education concerning CPN-based interstate services.

Disadvantages

Compliance with subpart P imposes some costs on carriers.

Recent Efforts

No recent actions.

²⁵¹ 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff does not recommend that the Commission modify subpart P as part of this biennial review.

**PART 64, SUBPART Q – IMPLEMENTATION OF SECTION 273(D)(5) OF THE
COMMUNICATIONS ACT: DISPUTE RESOLUTION REGARDING EQUIPMENT STANDARDS**

Description

Section 273(d) of the Communications Act, as amended, establishes procedures to be followed by non-accredited standards organizations when setting industry-wide standards or generic requirements for telecommunications equipment or customer premises equipment (CPE). Section 273(d)(5) of the Act directs the Commission to prescribe a dispute resolution process to be used when all parties involved in such standards setting cannot agree on a dispute resolution process. Subpart Q establishes a default dispute resolution process in response to section 273(d)(5). It provides for resolution of technical disputes by a three-member panel, whose recommendation can be overturned if three-fourths of the funding parties vote to do so.

Purpose

Subpart Q is designed to implement section 273(d) and ensure the fair, prompt and economical resolution of disputes that arise in the context of private sector development of technical standards for telecommunications equipment and CPE.

Analysis

Status of Competition

The market for CPE is competitive, with vibrant competition among a wide variety of CPE manufacturers.

Advantages

The default dispute resolution process prescribed in subpart Q provides for the fair, prompt and economical resolution of disputes when the parties are unable to agree on a mutually satisfactory process.

Disadvantages

Since this dispute resolution process is only used when the parties cannot agree on another approach, it does not appear to have any significant disadvantages.

Recent Efforts

No recent action.

Recommendation

The staff recommends that the Commission retain subpart Q.

PART 64, SUBPART R – GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION

Description

Section 254(g) of the Communications Act, as amended,²⁵² requires interexchange rate averaging and rate integration. The rate averaging provisions require interexchange carriers to charge customers in rural and high cost areas no more than they charge urban customers. The rate integration provisions require carriers to charge customers in one state the same rates for interexchange service charged to customers in any other state. Subpart R implements this requirement.

Purpose

Subpart R is designed to implement section 254(g) of the Act and ensure that all customers, regardless of where they live, have access to interexchange services at comparable rates.

Analysis

Status of Competition

The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The rate averaging and rate integration requirements help ensure that all domestic interexchange toll service customers, regardless of where they live, share in the benefits of rate reductions and new technologies that result from the competitive nature of the interexchange market.

Disadvantages

By requiring carriers to average their rates across all of their service areas, the rate averaging and rate integration provisions in the statute create implicit subsidies running from low-cost areas to high-cost areas. This has the potential to distort the market by discouraging carriers from serving high cost areas. It can also make it difficult for national interexchange carriers serving both high and low cost areas to compete effectively with carriers that provide targeted interexchange services in low-cost areas.

Recent Efforts

The U.S. Court of Appeals for the D.C. Circuit recently affirmed the Commission's ruling that an interexchange carrier and all of its affiliates must charge the same integrated long distance rates. The court, however, vacated the Commission's decision that Section 254(g) unambiguously applies rate integration to CMRS carriers and remanded to the Commission the question of whether rate integration should apply to these carriers.²⁵³

²⁵² See 47 U.S.C. § 254(g).

²⁵³ *GTE Service Corp. v. FCC*, No. 97-1538 (D.C. Cir., July 14, 2000).

Recommendation

The staff recommends review of the applicability of rate integration to CMRS carriers pursuant to the court remand, but does not recommend that this be treated as a part of the 2000 Biennial Review. The staff recommends retention of the other rate integration and rate averaging rules that implement the statutory mandate of the 1996 Act. The staff recommends that the Commission monitor the potential effect of these provisions on the development of competition in the interexchange market.

**PART 64, SUBPART S – NONDOMINANT INTEREXCHANGE CARRIER CERTIFICATIONS
REGARDING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION
REQUIREMENTS**

Description

Section 254(g) of the Communications Act, as amended, requires interexchange carrier rate averaging and rate integration.²⁵⁴ Subpart S implements this requirement by requiring that nondominant carriers that provide detariffed interstate domestic interexchange service file an annual certification with the Commission (signed by an officer under oath), stating that they comply with the rate averaging and rate integration requirements in section 254(g).

Purpose

Subpart S is intended to implement section 254(g) and insure compliance with the statutory requirement that all customers, regardless of where they live, have access to interexchange services at comparable rates.

Analysis

Status of Competition

The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The rate averaging and rate integration certification requirements facilitate enforcement of the statutory requirement in section 254(g) of the Act that all domestic interexchange toll service customers, regardless of where they live, share in the benefits of rate reductions and new technologies that result from the competitive nature of the interexchange market.

Disadvantages

Requiring that nondominant interexchange carriers file annual certifications may impose some administrative costs on these carriers.

Recent Efforts

There have been no recent actions.

Recommendation

The staff recommends retention of subpart S.

²⁵⁴ 47 U.S.C. § 254(g).

**PART 64, SUBPART T – SEPARATE AFFILIATE REQUIREMENTS FOR INCUMBENT
INDEPENDENT LOCAL EXCHANGE CARRIERS THAT PROVIDE IN-REGION, INTERSTATE
DOMESTIC INTEREXCHANGE SERVICES OR IN-REGION INTERNATIONAL
INTEREXCHANGE SERVICES**

Description

Subpart T establishes separate subsidiary requirements applicable to the provision of in-region, interstate domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers. Subpart T generally requires that the separate affiliate: (1) maintain separate books of account, although these books of account need not comply with Part 32 requirements; (2) not own transmission or switching facilities jointly with its affiliated exchange company, although the separate affiliate may share personnel or other assets or resources with an affiliated exchange company; (3) take, pursuant to tariff, any services for which its affiliated exchange carrier is required to file a tariff, although the separate affiliate may also take unbundled network elements and services for resale pursuant to the terms of pre-existing negotiated agreements approved under section 252 of the Act; and (4) be a separate legal entity from the affiliated exchange company, although the separate affiliate may share personnel, office space and marketing with the affiliated exchange companies. Subpart T was adopted pursuant to sections 1, 2, 4, 201, 202, 220, 251, 271, 272 and 303(r) of the Communications Act, as amended.²⁵⁵

Purpose

Subpart T is designed to prevent incumbent independent local exchange carriers from exercising market power in the provision of in-region long distance services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

By requiring a separate affiliate for the provision of in-region long distance service by independent incumbent local exchange carriers, subpart T helps to prevent these carriers from exercising market power in the provision of in-region long distance services.

Disadvantages

Subpart T may increase independent incumbent local exchange carriers' costs of providing in-region, interstate, interexchange services. Additionally, section 64.1903(c) is no longer applicable since it addresses exclusively the time period prior to August 30, 1999.

²⁵⁵ 47 U.S.C. §§ 151, 152, 154, 201, 202, 220, 251, 271, 272, and 303(r).

Recent Efforts

In August 1999, the Commission revised subpart T to allow independent LECs providing in-region long distance services solely on a resale basis to do so through a separate corporate division rather than through a separate legal entity.²⁵⁶

Recommendation

The staff recommends that the Commission modify subpart T to provide for triennial review of the requirement that independent incumbent LECs provide interexchange service through a separate affiliate. The staff also recommends that the Commission delete section 64.1903(c), since it pertains exclusively to the time period prior to August 31, 1999.

²⁵⁶ *Regulatory Treatment of LEC Provision of Interexchange Services, Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Market Place, Second Order on Reconsideration*, 14 FCC Rcd 10771 (1999).

PART 64, SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

Description

Section 222 of the Communications Act, as amended,²⁵⁷ restricts carrier use of customer proprietary network information (CPNI), which, among other things, identifies to whom, where, and when a customer places a call, and identifies the types of service offerings to which the customer subscribes and the extent to which the service is used. The Commission adopted CPNI rules pursuant to section 222, but the order adopting those rules was overturned on appeal, as discussed in more detail below.²⁵⁸ Section 222 remains in effect, however, and the Commission has authority to enforce the CPNI protections in that section.

Purpose

The Commission adopted the CPNI rules in order to implement the provisions of section 222 and protect consumer privacy and foster competition.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is fully competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The CPNI rules protect consumer privacy and foster competition.

Disadvantages

The CPNI rules adopted by the Commission impose some costs on carriers. The 10th Circuit Court of Appeals decision concerning the Commission's CPNI rules is discussed below.

Recent Efforts

The 10th Circuit Court of Appeals found that the Commission's interpretation of the customer approval requirement for the use of CPNI in certain circumstances violated the First Amendment. Although the court did not discuss other aspects of the Commission's rules, its opinion concluded by vacating the Commission order adopting the CPNI rules. The court did not address the constitutionality of section 222, which remains in effect and continues to protect customer CPNI. The Commission is in the process of addressing the court's ruling.

²⁵⁷ 47 U.S.C. § 222.

²⁵⁸ *US West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 120 S Ct. 2215 (June 5, 2000) (No. 99-1427).

Recommendation

The staff does not recommend that the Commission take action concerning subpart U as part of the 2000 Biennial Review.

**PART 64, SUBPART V – TELECOMMUNICATIONS CARRIER SYSTEMS SECURITY AND
INTEGRITY PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW
ENFORCEMENT ACT (CALEA)**

Description

Section 105 of CALEA,²⁵⁹ requires that telecommunications carriers establish safeguards to ensure that interception of communications or access to call-identifying information can be activated only in accordance with a court order or other lawful authorization, and with the affirmative intervention of an officer or employee. Subpart V implements this CALEA requirement by mandating that carriers adopt policies and procedures for supervision and control of their employees and officers in this regard, and by requiring that carriers maintain secure records of each interception of communications or access to call-identifying information. Each telecommunication carrier is required to submit its policies and procedures to the Commission for review.

Purpose

Subpart V is intended to implement section 105 of CALEA and help protect subscribers' privacy rights by ensuring that any interception is in accordance with legal authorization.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart V helps protect subscriber privacy.

Disadvantages

Compliance with these requirements increases carrier costs.

Recent Efforts

Subpart V was adopted in September 1999.²⁶⁰

Recommendation

The staff does not recommend that the Commission modify subpart V as part of its 2000 Biennial Review.

²⁵⁹ 47 U.S.C. § 1004.

²⁶⁰ *Communications Assistance for Law Enforcement Act, Report and Order*, 14 FCC Rcd 4151 (1999).

**PART 64, SUBPART W – REQUIRED NEW CAPABILITIES PURSUANT TO THE
COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)**

Description

Subpart W establishes the technical requirements and standards that telecommunications carriers must satisfy to ensure that, when properly authorized, law enforcement officials have access to communications and call-identifying information, as required by section 103 of CALEA.²⁶¹ Subpart W parallels requirements and standards for wireless telecommunications carriers set out in Part 22, subpart J and Part 24, subpart J.

Purpose

Subpart W is intended to implement section 103 of CALEA and assist in enforcement of criminal laws, and to clarify what telecommunications carriers must do in order to satisfy the requirements of section 103(a) of CALEA.²⁶²

Analysis

Status of Competition

Not relevant.

Advantages

Subpart W facilitates enforcement of criminal law and clarifies what carriers must do in order to comply with CALEA.

Disadvantages

Compliance with these requirements increases carriers' costs.

Recent Efforts

On August 15, 2000, the D.C. Circuit affirmed in part and vacated and remanded in part the requirements contained in subpart W.²⁶³

Recommendation

The staff recommends that the Commission reassess its subpart W rules pursuant to the D.C. Circuit's remand.

²⁶¹ 47 U.S.C. § 1002.

²⁶² See *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Third Report and Order*, 14 FCC Rcd 16794 (1999).

²⁶³ *Aff'd in part and rev'd in part, United States Telecom Ass'n v. FCC*, Nos. 99-1442 *et al.* (D.C. Cir. Aug. 15, 2000).

PART 64, SUBPART X – SUBSCRIBER LIST INFORMATION

Description

Section 222(e) of the Communications Act²⁶⁴ requires carriers providing telephone exchange service to provide subscriber list information to requesting directory publishers “on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions.” Subpart X implements this statutory provision, addressing third party rights to subscriber list information, which includes listed subscribers’ names, addresses and telephone numbers, as well as headings under which businesses are listed in the yellow pages.

Purpose

Subpart X is intended to implement section 222(e) of the Act and encourage the development of competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from local exchange carriers.

Analysis

Status of Competition

The market for directory publishing has been dominated by incumbent LEC publishing operations, but is becoming increasingly competitive. Much of this increased competition is due to section 222 and the Commission’s implementing rules in subpart X.

Advantages

Subpart X fosters competition in directory publishing, and prevents incumbent local exchange carriers from using control of their subscriber information lists to undermine competition in the directory publishing business.

Disadvantages

These requirements may place some administrative burdens on local exchange carriers.

Recent Efforts

The Commission adopted the subpart X rules on August 23, 1999.²⁶⁵

Recommendation

The staff does not recommend that the Commission modify subpart X at this time.

²⁶⁴ 47 U.S.C. § 222(e).

²⁶⁵ *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Third Report and Order*, FCC 99-227 (rel. Sept. 9, 1999).

PART 64, SUBPART Y – TRUTH-IN-BILLING REQUIREMENTS FOR COMMON CARRIERS

Description

The Commission adopted the rules in subpart Y pursuant to its authority under sections 201(b) and 258 of the Communications Act of 1934, as amended.²⁶⁶ Subpart Y contains binding truth-in-billing guidelines that apply to carriers selling telecommunications services. Subpart Y requires carriers to provide customers with necessary information about the services and charges that are shown on the customer's bill in a user-friendly format. Specifically, subpart Y requires carriers to separate charges on the bill by provider, to describe clearly the services involved, to display clearly the name of the service provider in association with its charges, to display a toll-free number (or, in certain cases, a website) for consumer inquiries, to identify those charges for which failure to pay will not result in disconnection of the customer's basic local service, and to highlight new service providers.

Purpose

Subpart Y is designed to implement sections 201(b) and 258 of the Act and make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services in the increasingly competitive telecommunications market. Subpart Y is also intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change of consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill).

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart Y makes telephone bills easier for customers to understand and ensures that consumers have the information necessary to make informed choices among carriers and services. These rules also make it easier for consumers to detect and report fraud in the provision of telecommunications services such as slamming and cramming.

Disadvantages

These requirements may increase carrier costs somewhat.

²⁶⁶ 47 U.S.C. §§ 201(b) and 258. These rules were inadvertently placed in subpart U in the 1999 Code of Federal Regulations. This error was subsequently corrected and the rules were placed in subpart Y. 65 Fed. Reg. 36637 (June 9, 2000).

Recent Efforts

Some of the truth-in-billing rules contained in subpart Y took effect in November 1999, and several more took effect in April 2000.

In March 2000, the Commission modified the truth in billing rules slightly, specifying that the requirement that telephone bills highlight new service providers does not apply to services billed solely on a per-transaction basis, and making other minor modifications.²⁶⁷ These changes became effective on August 28, 2000.

Recommendation

The staff does not recommend further changes to subpart Y as part of the 2000 Biennial Review.

²⁶⁷ *Truth-in-Billing and Billing Format, Order on Reconsideration*, CC Docket No. 98-170, FCC 00-111 (rel. Mar. 29, 2000); *Errata*, DA 00-745 (rel. Mar. 31, 2000).

PART 65 – INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Description

Section 201 of the Communications Act, as amended, requires that rates for common carrier communications services be just and reasonable.²⁶⁸ Part 65 sets forth procedures and methodologies used by the Commission to prescribe an authorized interstate rate-of-return for the exchange access services of incumbent local exchange carriers subject to rate-of-return regulation. Price cap incumbent local exchange carriers also use the Commission prescribed rate-of-return for certain limited purposes. The Part 65 rules describe the methodologies to be used in calculating the cost of equity, the cost of debt, the weighted average cost of capital (both equity and debt), the interstate ratebase, and the carriers' interstate rate-of-return. These rules also require the filing of certain rate-of-return reports.

Part 65 is organized into seven lettered subparts.

- A – General
- B – Procedures
- C – Exchange Carriers
- D – Interexchange Carriers
- E – Rate-of-Return Reports
- F – Maximum Allowable Rates of Return
- G – Rate Base

Purpose

The Part 65 rules are designed to protect consumers from excessive rates by prescribing an authorized interstate rate of return used to set local exchange access rates for incumbent local exchange carriers subject to rate-of-return regulation. (End users pay the subscriber line charge element of interstate access charges directly. Other interstate access charges are paid by the interexchange carriers and reflected in their interstate long distance rates.)

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers in rural areas.

Advantages

The Part 65 rules protect consumers from excessive interstate access charges by incumbent local exchange carriers subject to rate-of-return regulation. The authorized interstate rate of return is also used by incumbent local exchange carriers for certain purposes, for example, calculating payments to and disbursements from the universal service fund and in the low end adjustment formula.

²⁶⁸ 47 U.S.C. § 201 (b).

Disadvantages

The Part 65 rules impose some paperwork burdens on carriers.

Recent Efforts

In 1995, the Commission substantially reformed the Part 65 rules. The major changes made by the 1995 order were the elimination of the biennial represcription schedule, and simplification of the represcription process. The Commission replaced the existing rule, which called for the initiation of rate return represcription proceedings every two years, with a semiautomatic trigger activated by changes in capital costs.²⁶⁹

In October 1998, the Common Carrier Bureau initiated a proceeding to represcribe the rate of return.²⁷⁰ This proceeding has not yet been completed.

Recommendation

The staff does not recommend changes in the Part 65 rules at this time.

²⁶⁹ *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Prescription and Enforcement Process, Report and Order*, 10 FCC Rcd 6788 (1995).

²⁷⁰ *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking*, 13 FCC Rcd 20561 (1998).

PART 68 – CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Description

Part 68 was established in 1974 as the result of a court decision ruling that the Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) (such as telephones, fax machines, modems, etc.) to the public switched telephone network (PSTN), so long as the CPE would not cause harm to the PSTN.²⁷¹ Part 68 requires that CPE be tested to show that it will not harm the PSTN or carrier personnel, and then registered with the Commission. Carriers are obligated to permit the free connection of registered CPE to the PSTN, but they can require disconnection of unregistered CPE or of CPE that causes harm to the PSTN without recourse to litigation. Part 68 also establishes the right of customers to use competitively provided inside wiring.

In addition, Part 68 implements a statutory requirement for telephone equipment compatibility with hearing aids,²⁷² and contains two consumer protection provisions mandated by statute: a requirement that all fax transmissions include source labeling,²⁷³ and a requirement that CPE support equal access to providers of operator services.²⁷⁴

Part 68 is organized into six lettered subparts:

- A – General
- B – Conditions on Use of Terminal Equipment
- C – Registration Procedures
- D – Conditions for Registration
- E – Complaint Procedures
- F – Connectors

Purpose

The Part 68 rules are designed to foster competition in the provision of CPE and inside wiring by permitting the connection of competitively provided CPE and inside wiring to the PSTN. Part 68 is also intended to ensure that the connection of CPE and inside wiring does not harm the PSTN or injure personnel. In addition, Part 68 is designed to ensure the compatibility of hearing aids and telephone receivers so that persons with hearing aids will be able to use virtually all telephones.

Analysis

Status of Competition

The market for CPE and the market for the installation of inside wiring in single family residences are fully competitive.

²⁷¹ *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

²⁷² Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610.

²⁷³ 47 U.S.C. § 227(d)(2).

²⁷⁴ 47 U.S.C. § 227(d)(1).

Advantages

Part 68 benefits consumers by fostering competition in the provision of CPE and inside wiring. The competition engendered by Part 68 has greatly increased innovation in CPE and reduced prices. Part 68 also benefits consumers and the industry by preventing harm to the PSTN and carrier personnel. In addition, Part 68 benefits people with hearing disabilities and those who communicate with these people by requiring that telephone receivers be compatible with hearing aids.

Disadvantages

The present Part 68 requirements for CPE registration impose additional costs on manufacturers and may delay customer access to new CPE. The present Part 68 registration program also uses Commission resources that might otherwise be available for other priorities.

Recent Efforts

The Commission is taking steps to streamline the Part 68 CPE registration process. On June 2, 2000, the Commission implemented measures allowing private entities to register CPE, ending the policy of having the Commission perform this function on an exclusive basis.²⁷⁵ A Notice of Proposed Rulemaking, released May 22, 2000 in CC Docket No. 99-216, proposes that the Commission cease performing all registration functions other than consideration of appeals, thus entirely privatizing CPE registration.²⁷⁶ In the May 22 Notice, the Commission also proposes to privatize the development of technical criteria that CPE must meet in order to be registered.

Recommendation

The staff recommends continuation of the basic Part 68 requirement that LECs must allow the connection of Part 68-compliant CPE and inside wiring to the PSTN. The staff also recommends continuing the requirements for hearing aid compatibility and the other consumer protection requirements in Part 68. In addition, the staff recommends continuation of the Commission's ongoing efforts in CC Docket No. 99-216 to streamline and privatize the development of technical standards and the CPE registration process.

²⁷⁵ *Office of Engineering and Technology and Common Carrier Bureau Announce the Designation of Telecommunications Certification Bodies (TCBs) to Approve Radiofrequency and Telephone Terminal Equipment, Public Notice, DA 00-1223 (rel. June 2, 2000); see also, 1998 Biennial Regulatory Review – Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements, Report and Order, 13 FCC Rcd 24687 (1998).*

²⁷⁶ *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216, Notice of Proposed Rulemaking, FCC 00-171 (rel. May 22, 2000).*

PART 69 – ACCESS CHARGES

Description

Sections 201 and 202 of the Communications Act of 1934, as amended, require that rates, terms and conditions for telecommunications services be just and reasonable,²⁷⁷ and prohibit unjust or unreasonable discrimination.²⁷⁸ Part 69 implements these sections of the Act by establishing rules that perform the following major functions. First, the Part 69 rules establish the rate structure for access charges to be paid by interexchange carriers for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users.²⁷⁹ These rate structure rules establish the access charge rate elements as well as the nature of the charges, such as whether they are assessed on a per minute or a flat-rate basis. Second, the Part 69 rules govern how rate-of-return LECs calculate their access charge rates. Third, the Part 69 rules, in conjunction with the Part 61 price cap rules, establish the degree of pricing flexibility available to price-cap LECs. Finally, Part 69 provides for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return LECs.

Part 69 is organized into eight lettered subparts:

- A – General
- B – Computation of Charges
- C – Computation of Charges for Price Cap Local Exchange Carriers
- D – Apportionment of Net Investment
- E – Apportionment of Expenses
- F – Segregation of Common Line Element Revenue Requirement
- G – Exchange Carrier Association
- H – Pricing Flexibility

Purpose

The Part 69 rules are designed to implement the provisions of sections 201 and 202 of the Act and protect consumers by preventing the exercise of market power by incumbent LECs and ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory. The requirement for a certain minimum set of access charge rate elements and the rate calculation rules for rate-of-return carriers also greatly reduce the resources required in the tariff review process.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

²⁷⁷ 47 U.S.C. § 201.

²⁷⁸ 47 U.S.C. § 202.

²⁷⁹ Local exchange carriers subject to price cap regulation must offer a basic set of access rate elements, but are free to offer additional access services.

Advantages

The Part 69 rules protect customers from the exercise of market power by incumbent LECs. The requirement for a minimum set of access charge rate elements and the pricing rules for both rate-of return and price-cap LECs greatly reduce the Commission resources required to ensure carrier compliance with sections 201 and 202 of the Act. These requirements also greatly facilitate analysis of access charges by other interested parties. The creation of NECA facilitates the filing of access charge tariffs by smaller rate-of-return LECs and reduces the administrative costs involved

Disadvantages

The requirement that the LECs offer a minimum set of access charge rate elements limits their flexibility and could over time reduce their ability to respond appropriately to competition. The pricing rules for both price-cap and rate-of-return LECs could also undermine their ability to respond to competition if not adjusted over time. The pooling of revenues and costs under the NECA tariffs reduces the incentives of individual carriers to improve efficiency.

Recent Efforts

The Commission recently addressed the access charge rules applicable to price cap LECs in the CALLS proceeding.²⁸⁰ The Commission has also established rules permitting price cap LECs greater pricing flexibility as they achieve specified competitive milestones.²⁸¹ In addition, the Commission is seeking comment on issues relating to further pricing flexibility. The Commission has also initiated a rulemaking proceeding addressing issues relating to access charge reform for rate-of-return LECs.²⁸²

Recommendation

In light of recent Commission decisions concerning Part 69 discussed above, the staff does not recommend any new initiatives relating to Part 69 in the context of this biennial regulatory review. The ongoing proceedings addressing issues of access charge reform provide an appropriate means of addressing competitive developments in the exchange access market. We also note that the inter-carrier compensation proceeding that the staff recommends in the text of this report could result in revisions to Part 69 that would address anticipated competitive developments.

The staff recommends deleting a number of provisions that apply only to past time periods, or are otherwise no longer in effect, including sections 69.116, 69.117, 69.126, 69.127, and 69.612.

²⁸⁰ *Access Charge Reform*, CC Docket No. 96-262, FCC 00-193, (rel. May 31, 2000).

²⁸¹ *Access Charge Reform*, 14 FCC Rcd 14221 (1999).

²⁸² *Access Charge Reform for Incumbent LECs Subject to Rate-of-Return Regulation*, 13 FCC Rcd 14236 (1998).

**PART 73, –RADIO BROADCAST SERVICES, SECTION 73.3555 – THE BROADCAST
OWNERSHIP RULES**

Description

Statutory authority for section 73.3555 of the Commission's rules is found in sections 308, 309 and 310 of the Communications Act of 1934, as amended. Section 308 requires the filing of a written application for licenses and construction permits (except in certain narrow enumerated cases) and states that such applications shall set forth such facts as the Commission may prescribe, including the ownership and location of the proposed station. Section 309 requires the Commission, except in the case of certain designated applications, to determine whether the grant of an application would serve the public interest, and to grant the application upon such a finding. Section 310(d) specifies that no construction permit or license shall be transferred without first filing an application with the Commission and without the Commission's finding that the public interest would be served thereby. Section 73.3555 contains the rules limiting the degree of common ownership of radio and television stations. It also contains attribution rules that specify when interests in mass media facilities will be considered cognizable for purposes of applying the mass media ownership rules.

Purpose

The broadcast ownership rules are intended to foster diversity and competition in broadcasting.

Analysis

Status of Competition

For an assessment of competition in broadcasting, see section V of the Report.

Advantages

The Commission is precluded from regulating the content of programming by section 326 of the Communications Act of 1934, as amended, and by the First Amendment. The ownership rules are a structural method of ensuring diversity of viewpoints in broadcasting. The rules are also intended to foster competition in broadcasting.

Disadvantages

Broadcasters allege that the rules restrict mass media entities in competing with other content providers that are not subject to ownership rules and restrict scale efficiencies.

Recent Efforts

Section V of the Report details the Commission's recent reviews of the ownership rules, including that contained in the recently released 1998 Biennial Regulatory Review Report.

Recommendation

Section V of the Report details a recommendation with respect to each of the ownership rules contained in section 73.3555.

PART 80 – STATIONS IN THE MARITIME SERVICES, SUBPARTS J (PUBLIC COAST STATIONS) AND Y (COMPETITIVE BIDDING PROCEDURES)

Description

Part 80²⁸³ contains licensing, technical, and operational rules for radio stations in the maritime services, which provide for the distress, operational, and personal communications needs of vessels at sea and on inland waterways.²⁸⁴ Maritime frequencies are allocated internationally by geographic region and type of communication in order to facilitate interoperable radio communications among vessels of all nations and stations on land worldwide. Land stations in the maritime services are the links between vessels at sea and activities on shore. They are spread throughout the coastal and inland areas of the United States to carry radio signals and messages to and from ships.

For purposes of the Biennial Regulatory Review, the analysis of Part 80 in this report focuses on the rules affecting public coast stations (subparts J and Y), which are unique in the Maritime Services in that they are used for commercial applications, are licensed on a geographic exclusive-use basis, and are subject to licensing by the Commission's competitive bidding procedures.

Public coast stations are commercial mobile radio service (CMRS) providers that allow ships to send and receive messages and to interconnect with the public switched telephone network.²⁸⁵ VHF band (156-162 MHz) public coast stations (VPC) provide short-range communications for vessels not more than 30 nautical miles from shore. High seas band (2-27.5 MHz) public coast stations serve vessels far from shore. Automated Maritime Telecommunications System (AMTS) stations are a special type of public coast station operating in the 216-220 MHz band. AMTS stations are licensed to provide coverage over an entire inland waterway or a substantial portion of an ocean coastline.

Public coast stations are common carriers, and thus charge a fee for providing voice, telex, fax, or data transmission services. Public coast stations also provide a vital public service because they can reach well beyond the limits of terrestrial radio systems and are required by statute to relay distress messages free of charge.

Purpose

The primary purpose of the Maritime Services is to provide for the safety of life and property at sea.²⁸⁶ The specific purpose of the Part 80 public coast station rules is to establish the mechanism for allocating licenses, to ensure spectrum use that provides public coast licensees with maximum flexibility while concurrently respecting the unique nature of maritime spectrum, and to prevent

²⁸³ 47 C.F.R. Part 80.

²⁸⁴ *See Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 16949 (1997) (*Second Further Notice*).

²⁸⁵ *Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998) (*Maritime Third Report and Order*).

²⁸⁶ *Id.*, 13 FCC Rcd at 19856 ¶ 2.

interference. Public coast stations provide commercial operational and general purpose communications between ship and shore and between ships that are out of each others' radio range.

Analysis

Status of Competition

While competition in the CMRS industry as a whole continues to benefit from the effects of increased competition, as evidenced by lower prices to consumers and increased diversity of service offerings, competition is generally less robust in the public coast services, due in part to the unique nature of maritime communications and the predominant safety-of-life communications responsibilities required of licensees. In addition, other CMRS services – such as cellular and PCS – can serve as substitutes for commercial ship-to-shore communications, particularly for vessels operating near the coast and on inland waterways. Large-scale public coast operators – particularly MariTel – are becoming predominant in VPC as many small and independent licensees leave the business. Competition is stronger in AMTS than on the high seas band.

Advantages

The public coast station rules promote the safety of life and property at sea, while concurrently providing public coast licensees with the opportunity to compete as CMRS providers. For example, the rules provide for licensing of VPC on a geographic basis, allow partitioning and disaggregation, and permit VPC licensees to utilize capacity not needed for maritime service to provide other types of services.²⁸⁷ These characteristics are consistent with the regulatory flexibility the Commission has provided in other competitive services.

The subpart Y competitive bidding rules establish procedures for the efficient licensing of spectrum. Use of auction procedures allows for substantially faster licensing than alternative licensing methods such as lotteries and comparative hearings, and is more likely to result in award of licenses to those entities that value the spectrum the most and will use it most efficiently. Auction rules also enable the Commission to recover a portion of the value of the spectrum for the benefit of the public.

Disadvantages

Because of the unique characteristics of the maritime services, public coast station licensees are subject to responsibilities that other CMRS providers do not face. The international allocation of maritime frequencies and the associated statutes, treaties, and agreements limit the flexibility of use of maritime frequencies. Because two frequency blocks are allocated to AMTS, competition is limited to two competitors at any location and disaggregation is not currently available in AMTS. There are additional administrative burdens associated with the competitive bidding of public coast station licenses, including filing and reporting requirements, as well as the cost of maintaining staff and electronic resources to participate in auctions. Nevertheless, the delays associated with this process are significantly less than those historically associated with licensing by lottery or hearing.

²⁸⁷ See *Second Further Notice*, 12 FCC Rcd at 16965.

Recent Efforts

In the 1998 *Maritime Third Report and Order* in the Maritime Services proceeding, the Commission substantially revised the public coast service rules to provide opportunities for the development of competitive new services, streamline licensing procedures, promote technological innovation, and enhance regulatory symmetry between maritime CMRS providers and other CMRS providers.²⁸⁸ For example, VPS and AMTS stations may now provide service to units on land, provided that priority is given to marine originating communications. In addition, in December 1998, the Commission held its first auction of spectrum in the public coast service, which resulted in the award of 26 VHF public coast station licenses.²⁸⁹

Recommendation

The Maritime Services proceeding has established the framework for increased competition within the public coast service, and between public coast stations and other CMRS providers. Moreover, licensees that acquired their licenses in the 1998 auction are still engaged in buildout of their networks. For these reasons, the staff does not believe that there is a need to revise the existing maritime rules in order to further competition. The staff recommends that for the time being, only nonsubstantive revisions be made to the structure of the Part 80 rules, to simplify and provide clarity to licensees and applicants.

²⁸⁸ *Maritime Third Report and Order*, 13 FCC Rcd at 19856 ¶ 2.

²⁸⁹ See Auction Fact Sheet at <http://www.fcc.gov/wtb/auctions/coast/coastfct.html>.

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES.

Description

Part 90²⁹⁰ contains licensing, technical, and operational rules for the group of mobile services historically described as “private land mobile radio services” or “PLMRS.” Services regulated under this rule part include commercial services such as Specialized Mobile Radio (SMR) and private carrier paging (PCP), non-commercial services such as public safety, and services that are used by utilities, transportation companies, and other businesses for both commercial and private internal purposes.

Prior to the passage of the Omnibus Budget Reconciliation Act of 1993 (OBRA),²⁹¹ all Part 90 services were classified as private, *i.e.*, non-common carrier, services. With the passage of OBRA, however, Congress reclassified 800 MHz and 900 MHz SMR, PCP, and some 220 MHz and Business Radio services as commercial mobile radio services or “CMRS,” and required CMRS providers in these services to be regulated as common carriers.²⁹² The regulatory status of non-CMRS Part 90 services was not affected by OBRA, and these services continue to be classified as private services.

Part 90 contains 22 subparts. Some of these subparts apply generally to all Part 90 licensees, while others establish licensing, technical, and operational rules for specific services.²⁹³ In general, the rules in this part: (1) specify the frequency bands in which each service operates; (2) define the service area of licenses in each frequency band; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. For certain CMRS services, Part 90 also contains subparts dealing with the auction and award of licenses,²⁹⁴ although many of these rules have since been consolidated in Part 1.

For purposes of the Biennial Regulatory Review, the analysis of Part 90 in this report focuses on those subparts that affect CMRS providers:

- Subpart L - Authorizations in 470-512 MHz Band
- Subparts M, X - Intelligent Transportation Systems Radio Service/Auction Rules
- Subpart P - Paging Operations
- Subparts S, U, V - 800/900 MHz SMR Service/Auction Rules
- Subparts T, W - 220 MHz Service/Auction Rules

²⁹⁰ 47.C.F.R. Part 90.

²⁹¹ Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66. 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*) (1993 Budget Act or OBRA).

²⁹² *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (CMRS Second Report and Order).

²⁹³ See, *e.g.*, Part 90, subpart L (“Authorization and Use of Frequencies in the 470-512 MHz Band”).

²⁹⁴ See, *e.g.*, Part 90, subpart U (“Competitive Bidding Procedures for the 900 MHz Specialized Mobile Radio Service”).

Purpose

The purpose of the Part 90 rules is to establish basic ground rules for assignment of spectrum in Part 90 services, to ensure efficient spectrum use by licensees, and to prevent interference.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 CMRS providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.²⁹⁵

Advantages

The Part 90 rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 90 frequency bands that are licensed exclusively to CMRS providers (*e.g.*, SMR), auction rules promote efficient licensing of spectrum to those entities that value it the most. In other bands, site-specific licensing and frequency coordination are used to promote efficient spectrum use.

Disadvantages

The Part 90 rules impose limited administrative and technical burdens that are inherent to the licensing process and that require compliance with technical and operational rules.

Recent Efforts

The Commission has recently made changes to Part 90 in several rulemaking proceedings, as described in greater detail within this Staff Report. In the *Universal Licensing* proceeding, the Commission eliminated many of the service-specific licensing rules in Part 90 as part of its consolidation of all wireless licensing rules into Part 1.²⁹⁶ The Commission also made numerous changes to Part 90 rules in the recently adopted Report and Order in the Part 90 Biennial Regulatory Review proceeding.²⁹⁷

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly revised and streamlined the Part 90 rules in several recent proceedings. Therefore, the staff concludes that significant modification or repeal of the Part 90

²⁹⁵ *Fifth Competition Report*, *supra*, at 9-27, 36-63.

²⁹⁶ *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order*, 13 FCC Rcd 21027 (1998); *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11145 (1998).

²⁹⁷ *In the Matter of 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 - Private Land Mobile Radio Services*, WT Docket No. 98-182, RM-9222, *Report and Order and Further Notice of Proposed Rule Making*, FCC 00-235 (rel. July 12, 2000).

rules is not necessary at this time. However, where modifications could be made to streamline the rules in specific subparts, the staff has so noted in the detailed analysis of those Part 90 subparts.

**PART 90, SUBPART L – REGULATIONS FOR AUTHORIZATION AND USE OF FREQUENCIES
IN THE 470-512 MHZ BAND**

Description

Part 90, subpart L²⁹⁸ governs the authorization and use of the 470-512 MHz band by both commercial and private land mobile stations. Frequencies in the 470-512 MHz band are shared with UHF-TV channels 14-20, and are therefore only available in eleven cities, with different frequencies allocated in each market. Originally, channels in the 470-512 MHz band were allocated to seven frequency pools based on category of eligibility. In 1997, the Commission eliminated the separate allocation to these pools and created a General Access Pool to permit greater flexibility and foster more effective and efficient use of the 470-512 MHz band. Under current rules, all unassigned channels, including those that subsequently become unassigned, are considered to be in the General Access Pool and are available to all eligible licensees on a first-come, first-served basis. If a channel is assigned in an urbanized area, however, subsequent authorizations on that channel will only be granted to users from the same category.²⁹⁹

In general, the rules in subpart L: (1) specify the frequencies available for assignment in the 470-512 MHz band; (2) define the location of stations and service area of licenses in each frequency block; (3) establish minimum loading requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. In accordance with these rules, new applicants may apply for only one channel at a time.³⁰⁰ Licensees are required to show that any assigned channels in this band in a particular urbanized area are at full capacity before they can be assigned additional 470-512 MHz channels in that area.³⁰¹ The rules in this part also specify the minimum allowable distance between co-channel stations.³⁰² For purposes of loading requirements, licensees in the 470-512 MHz band are divided into two groups: the Public Safety Pool and the Industrial/Business Pool.³⁰³ After loading a channel to full capacity, a licensee may apply for another channel.³⁰⁴ Current licensees may use existing loading to satisfy this requirement and apply for more than one channel at one time. Licensees in the 470-512 MHz band that are operating above full capacity may use those units to qualify for additional channels. Licensees operating in other frequency bands may also use existing licensed units to qualify for more than one channel at one time.

²⁹⁸ 47 C.F.R. Part 90, subpart L.

²⁹⁹ The seven categories of eligible users are: (1) Public safety; (2) Power and telephone maintenance licensees; (3) Special industrial licensees; (4) Business licensees; (5) Petroleum, forest products, and manufacturers licensees; (6) Railroad, motor carrier, and automobile emergency licensees; and (7) Taxicab licensees. 47 C.F.R. § 90.311.

³⁰⁰ 47 C.F.R. § 90.311.

³⁰¹ *Id.*

³⁰² 47 C.F.R. § 90.307.

³⁰³ 47 C.F.R. § 90.313(a).

³⁰⁴ 47 C.F.R. § 90.313(c).

Purpose

The purpose of the subpart L rules is to establish basic ground rules for assignment of spectrum in the 470-512 MHz service, to ensure efficient spectrum use by licensees, and to prevent interference with UHF television stations operating on the shared frequencies.

Analysis

Status of Competition

Because land mobile use of the 470-512 MHz band is limited by the sharing of the band with broadcast channels 14-20, service in the band has been narrowly geared to industrial and public safety use in a limited number of urban locations. Demand for these channels to provide commercial services to consumers has been largely absent.

Advantages

The subpart L rules provide a clear, predictable structure for the assignment and use of spectrum. Site-specific licensing and frequency coordination are used to promote efficient spectrum use.

Disadvantages

The subpart L rules impose limited administrative and technical burdens that are inherent to the licensing process and compliance with technical and operational rules. Because the band is shared with television broadcast stations, the technical burden imposed on licensees to prevent interference with co-channel operations is somewhat greater than in other bands allocated exclusively to wireless services.

Recent Efforts

In the *Second Report and Order* in the Refarming proceeding, the Commission authorized centralized trunking in the 470-512 MHz band if a licensee has an exclusive service area or obtains consent from all co-channel and adjacent channel licensees and frequency coordination is obtained.³⁰⁵

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. The staff concludes that significant modification or repeal of the subpart L rules is not necessary at this time.

³⁰⁵ See *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Report and Order*, 10 FCC Rcd 10076 (1995); *Memorandum Opinion and Order*, 11 FCC Rcd 17676 (1996); *Second Report and Order*, FCC 97-61 (rel. Mar. 12, 1997). See 47 C.F.R. § 90.187(b). The FCC has recognized two types of trunking: centralized and decentralized. A centralized trunked system uses one or more control channels to transmit channel assignment information to the mobile radios. In a decentralized trunked system, the mobile radios scan the available channels and find one that is clear.

**PART 90, SUBPARTS M (INTELLIGENT TRANSPORTATION SYSTEMS RADIO SERVICE)
AND X (COMPETITIVE BIDDING RULES FOR THE LOCATION AND MONITORING
SERVICE)**

Description

Part 90, subpart M³⁰⁶ contains licensing, technical, and operational rules for the Intelligent Transportation Systems (ITS) radio service. ITS radio service consists of two sub-categories: the Location and Monitoring Service (LMS) and the Dedicated Short Range Communications Service (DSRCS).

Location and Monitoring Systems (LMS)

LMS systems are used for such functions as vehicle tracking and location, automated toll collection, and other communications functions related to vehicles. LMS systems operate in the 902-928 MHz band, which they share with federal government radiolocation systems, Industrial, Scientific and Medical devices (LMS use is secondary to both of these uses), licensed amateur radio operations, and unlicensed Part 15 equipment (both of which are secondary to LMS and all other uses of the band).

The subpart M LMS service rules, governing the licensing of LMS in the 902-928 MHz band, were adopted in 1995.³⁰⁷ In general, the subpart M rules: (1) specify the frequency bands in which LMS licensees operate; (2) define the service area of LMS licenses in each frequency band; (3) establish minimum construction or coverage requirements for LMS licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference.³⁰⁸ The technical rules for the 902-928 MHz band contain additional provisions governing secondary operation by Part 15 equipment users and amateur licensees in the LMS band to reduce potential interference between these uses and LMS operations. The rules also establish limitations on LMS systems' interconnection with the public switched network and set forth a number of technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.

The LMS competitive bidding rules, set forth in Part 90, subpart X,³⁰⁹ were adopted in 1998.³¹⁰ Section 90.1101³¹¹ states that the auction of LMS licenses is generally subject to the competitive

³⁰⁶ 47 C.F.R. Part 90, subpart M.

³⁰⁷ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order*, 10 FCC Rcd 4695 (1995) (*LMS Report and Order*).

³⁰⁸ The definition of LMS also includes existing Automatic Vehicle Monitoring operations below 512 MHz. Unlike other LMS operations, LMS systems below 512 MHz may neither offer service to the public nor provide service on a commercial basis. See *LMS Report and Order*, 10 FCC Rcd at 4738, ¶ 86.

³⁰⁹ 47 C.F.R. Part 90, subpart X.

³¹⁰ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Second Report and Order*, 13 FCC Rcd 15182 (1998) (*Second LMS Report and Order*).

³¹¹ 47 C.F.R. § 90.1101.

bidding procedures set forth in Part 1, subpart Q. Section 90.1103³¹² sets forth service-specific rules defining designated entities in LMS. Pursuant to these rules, LMS licenses were auctioned by the Commission in 1999.

Dedicated Short Range Communications Service (DSRCS)

In October 1999, the Commission allocated 75 MHz of spectrum at 5.850-5.925 GHz for use by DSRCS systems operating in the Intelligent Transportation System radio service.³¹³ The Commission amended subpart M by adding technical rules establishing power, emission, and frequency stability limits for DSRCS operations. However, the Commission has deferred consideration of DSRCS licensing and service rules and spectrum channelization plans to a later proceeding, pending promulgation of standards by the Department of Transportation.

Purpose

The purpose of Part 90, subpart M is to provide a regulatory framework that allows entities to effectively deploy radio-based devices and systems to enhance safety of life and protection of property on the nation's highways, railways and other transportation corridors, without causing harmful interference to other radio services.

Analysis

Status of Competition

The services provided by LMS operators, such as vehicular tracking, tend to be niche services, and competition in these sectors appears to be more limited than in other types of wireless services. In addition, many LMS licensees are state and local government entities rather than commercial enterprises. The number of LMS licensees has increased, however, since the Commission completed its auction of multilateration LMS licenses in March 1999. As these licensees begin to deploy services, the level of competition in LMS could increase.

Advantages

The Part 90, subpart M rules provide a clear, predictable structure for the assignment and use of spectrum. Geographic area licensing of multilateration systems minimizes the administrative burden involved in obtaining a license and thus avoids undue delay in the authorization of new services to the public. Minimal technical standards facilitate the introduction of new technologies.

Disadvantages

The Part 90, subpart M rules impose some administrative burdens inherent to the licensing process and to compliance with technical and operational rules. The provisions relating to secondary use of the LMS band by Part 15 users and amateur licensees impose some additional technical burdens on LMS licensees to avoid and resolve interference between their systems and these other uses.

³¹² 47 C.F.R. § 90.1103.

³¹³ *Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, Report and Order*, 13 FCC Rcd 14321 (1999).

Recent Efforts

Aside from the DSRCs proceeding discussed above, the Commission has not significantly revised the Part 90, subpart M rules since the LMS auction.

Recommendation

In general, the rules in subparts M and X are integral to the basic licensing and spectrum management functions performed by the Commission, and the necessity for these rules is not significantly affected by changes in competition. Therefore, the staff concludes that significant modification or repeal of the rules is not necessary at this time. The staff recommends continuing to monitor developments in order to determine whether any additional rule modifications are necessary to foster competition.

PART 90, SUBPART P - PAGING OPERATIONS IN THE 929 MHZ BAND

Description

Part 90 subpart P contains licensing, technical, and operational rules for paging operations in the 929 MHz Band. This rule part includes services such as commercial paging and private carrier paging (PCP). Licensees may operate on exclusive channels or designated shared channels on a CMRS or PMRS basis.

In general, the rules in this subpart (1) specify the exclusive channels and shared channels; and (2) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. For paging operations on exclusive channels, the licensees are subject to Part 22 of the Commission's rules regarding the Paging and Radiotelephone Service.

Purpose

The purpose of the Part 90, subpart P rules is to establish basic ground rules for assignment and use of exclusive or shared channels in the 929 MHz Band and to prevent interference.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 paging providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.³¹⁴

Advantages

The Part 90, subpart P rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 90, Subpart P, frequency bands that are licensed on an exclusive basis are subject to competitive bidding. The shared channels are available to all eligible entities.

Disadvantages

The Part 90, subpart P rules impose limited administrative and technical burdens that are inherent to the licensing process and compliance with technical and operational rules.

Recent Efforts

The Commission has made significant changes to its Part 90, subpart P rules in recent years. In the mid-1990s, the Commission converted the authorization of stations in the 929 MHz Band from the original site-by-site procedure to a geographic area licensing process. The *Second Report and Order* established geographic area licensing for 929 MHz paging and adopted competitive bidding procedures.³¹⁵ The *Third Report and Order* changed the geographic area licensing of 929 MHz paging from MTAs to MEAs and clarified that spectrum will automatically

³¹⁴ *Fifth Competition Report*, *supra*, at 9-27, 36-63.

³¹⁵ *See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997) (*Second Report and Order*).

revert to the geographic area licensee in all instances where a non-geographic area incumbent licensee permanently discontinues service, as well as allowing geographic area licensees to partition their licenses.³¹⁶ The Commission auctioned geographic licenses for the exclusive channels in the 929 MHz band.³¹⁷ Furthermore, the Part 22 Rules regarding paging now apply to all 929 MHz licensees on exclusive channels. More recently, most of the application filing rules were moved from this subpart to Part 1 in connection with implementation of electronic filing procedures and the Universal Licensing System.

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly revised and streamlined the Part 90, subpart P rules and consolidated them with the Part 22 rules. The remaining rules are necessary for the operation and interference protection for licensees in the shared channels in the 929 MHz Band. Therefore, the staff concludes that significant modification or repeal of the Part 90, subpart P rules is not necessary at this time.

³¹⁶ See *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999) (*Third Report and Order*).

³¹⁷ See 929 and 931 MHz Paging Auction Closes, *Public Notice*, DA 00-508 (rel. Mar. 6, 2000).

PART 90, SUBPARTS S (REGULATIONS FOR LICENSING AND USE OF FREQUENCIES IN THE 800 AND 900 MHZ BANDS), AND U AND V (COMPETITIVE BIDDING PROCEDURES FOR THE 900 AND 800 MHZ SERVICE)

Description

Subpart S³¹⁸ contains licensing, technical, and operational rules the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) services, as well as non-commercial services above 800 MHz, *i.e.*, public safety services and services that are used by utilities, transportation companies, and other businesses for internal purposes. Prior to the passage of the Omnibus Budget Reconciliation Act of 1993 (OBRA),³¹⁹ all of these services were described as “private land mobile radio services” or “PLMRS,” and were classified as private, *i.e.*, non-common carrier, services. With the passage of OBRA, however, Congress reclassified 800 MHz and 900 MHz SMR services as commercial mobile radio services or “CMRS,” and required all CMRS providers to be regulated as common carriers.³²⁰ The regulatory status of non-CMRS Part 90 services was not affected by OBRA, and these services continue to be classified as private land mobile radio services.

In general, the rules in Subpart S: (1) specify the frequency bands in which each service operates; (2) define the service area of licenses in each frequency band; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference.

Subparts U and V³²¹ contain competitive bidding rules and procedures for 900 MHz SMR and 800 MHz SMR services, respectively. The rules in these subparts: (1) identify the licenses to be sold by competitive bidding; (2) establish the competitive bidding mechanisms to be used in 900 and 800 MHz SMR auctions; (3) establish application, disclosure and certification procedures for short- and long-form applications; (4) specify down payment, withdrawal, and default mechanisms; (5) provide definitions of gross revenues for designated entities and specify the bidding credits for which designated entities qualify; and (6) provide eligibility and technical requirements for partitioning and disaggregation.

The original Subpart S rules for were adopted by the Commission in 1982, and provided for site-based licensing of 800 and 900 MHz channels.³²² Following the passage of OBRA, the Commission initiated rulemakings to use geographic licensing and auctions in the 800 MHz and 900 MHz services. In PR Docket 89-553, the Commission revised Subpart S to provide for geographic licensing of the 900 MHz SMR service, and replaced the previous site-based licensing

³¹⁸ 47 C.F.R. Part 90, subpart S.

³¹⁹ Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66. Title VI § 6002(b)(2)(a), (b). 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*)

³²⁰ *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994).

³²¹ 47 C.F.R. Part 90, subparts U and V.

³²² *Amendment of Part 90 of the Commission’s Rules to Release Spectrum in the 806-821/851-866 MHz Bands and to Adopt Rules and Regulations Which Govern Their Use, Second Report and Order*, 90 FCC 2d 1281 (1982), *recon. Memorandum Opinion and Order*, 95 FCC 2d 477 (1983).

rules with competitive bidding rules by adding Subpart U to Part 90.³²³ In PR Docket No. 93-144, the Commission adopted geographic licensing rules for 800 MHz SMR, and adopted the competitive bidding rules in Subpart V.³²⁴ In both services, the Commission grandfathered all previously granted site-based SMR licenses. Consequently, many of the Subpart S rules governing operation by site-based SMR licensees remain in effect as to these grandfathered licensees. In 1997, the Commission conducted the 900 MHz auction and awarded geographic area licenses. Geographic licensing of 800 MHz licensing has been divided into phases. The 800 MHz upper band auction was held in December 1997; the 800 MHz lower band and General Category auctions are scheduled for later this year.

Purpose

The purpose of the Subpart S rules is to establish basic ground rules for the assignment of spectrum to the affected SMR licensees, to ensure efficient spectrum use by licensees, and to prevent interference. The competitive bidding rules of Subparts U and V help to ensure access to new telecommunications offerings by ensuring that market forces guide the allocation of licenses so that all customer segments are served with the greatest economic efficiency. Additionally, the designated entity provisions of the competitive bidding rules are intended to provide opportunities for small businesses to participate in the provision of telecommunications services.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 SMR providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data. Some of the larger SMR carriers, particularly Nextel and Southern, provide digital wide-area voice services that compete with cellular and PCS. Other SMR carriers provide more traditional dispatch service on a local or regional basis. Although SMR channels have been used primarily for voice communications, systems are also being developed to carry data and facsimile services. Additionally, new digital SMR technology is leading to the development of new features and services, such as two-way acknowledgment paging, teleconferencing, and voicemail.

Advantages

The Subpart S rules provide a clear and predictable structure for the assignment and use of SMR spectrum, and afford substantial flexibility to licensees to choose the type of service they will provide based on market demand. The Subpart U and V auction rules promote efficient licensing of SMR spectrum to those entities that value it the most.

³²³ *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 6884 (1995) (900 MHz Second Report and Order).

³²⁴ *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995) (800 MHz First Report and Order).

Disadvantages

There continue to be differences between the licensing, technical, and operational rules that apply to grandfathered site-based SMR licenses and those that apply to geographic area licenses. This multiplicity of rules is potentially burdensome to SMR licensees who have both geographic and site-based systems, which may result in inconsistent regulatory obligations (*e.g.*, buildout requirements) for different portions of their systems.

Recent Efforts

In the past year, the Commission has reconsidered and revised some of its 800 MHz SMR rules in anticipation of the SMR lower band and General Category auctions.³²⁵ The Commission has also given incumbent SMR licensees with wide-area systems the option of applying the same buildout and coverage requirements as geographic licensees, thus giving these incumbents greater flexibility and parity with geographic licensees.³²⁶

Recommendation

In general, the rules in Subpart S are integral to the basic licensing and spectrum management functions performed by the Commission. Additionally, the need for these rules is not significantly affected by changes in the level of competition in wireless services. However, there are several rule sections that contain outdated or burdensome requirements. For example, the staff recommends that the Commission consider eliminating section 90.655,³²⁷ which requires individual end user licensing of SMR facilities that require Federal Aviation Administration clearance, have a significant environmental effect, or are located in a radio frequency “quiet zone.” The staff recommends that similar consideration be given to removing the requirement that site-based SMR licensees provide loading data in order to renew their licenses.³²⁸ We also recommend removal of section 90.607(a),³²⁹ which requires SMR applicants to provide a statement describing the applicant’s “planned mode of operation.” Such a requirement appears to serve no regulatory purpose, and is inconsistent with the Commission’s policies regarding flexible use of spectrum.

³²⁵ *Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Second Report and Order*, 12 FCC Rcd 19079 (1997) (*Second Report and Order*).

³²⁶ *Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Memorandum Opinion and Order on Remand*, 14 FCC Rcd 21679 (*Fresno Remand Order*).

³²⁷ 47 C.F.R. § 90.655.

³²⁸ 47 C.F.R. § 90.658.

³²⁹ 47 C.F.R. § 90.607(a).

PART 90, SUBPARTS T (REGULATIONS FOR LICENSING AND USE OF FREQUENCIES IN THE 220-222 MHZ BAND) AND W (COMPETITIVE BIDDING PROCEDURES FOR THE 220 MHZ SERVICE)

Description

Part 90, subpart T³³⁰ contains licensing, technical, and operational rules for the 220-222 MHz (220 MHz) service. In general, the rules in this part: (1) define the service area of 220 MHz licenses; (2) specify the permissible operations for authorized systems; (3) specify the frequencies available to 220 MHz licensees; (4) establish license terms; (5) establish the minimum construction or coverage requirements for 220 MHz licensees; and (6) define technical limits on operation (*e.g.*, antenna height, field strength) to prevent interference.

Part 90, subpart W³³¹ contains competitive bidding rules and procedures for commercial licenses in the 220 MHz service. The rules in this subpart: (1) specify which 220 MHz licenses are eligible for competitive bidding; (2) establish the competitive bidding mechanisms to be used in 220 MHz auctions; (3) establish application, disclosure and certification procedures for short- and long-form applications; and (4) specify down payment, withdrawal, and default mechanisms.

The original Subpart T rules for the 220 MHz service were adopted by the Commission in 1991.³³² The Commission intended the 220 MHz band to be used for the development of new spectrally efficient technologies that would support provision of two-way narrowband services, including mobile voice, dispatch, and messaging. In order to stimulate greater spectral efficiency in the band, the Commission adopted a band plan for the 220 MHz service based on 5 kHz channels, a narrower bandwidth than was generally used in other private land mobile services. As originally designed, the band plan provided for site-based licensing of 220 MHz channels. Between 1991 and 1993, the Commission awarded approximately 3,800 site-based licenses, as well as a small number of nationwide licenses, using lotteries to select from among mutually exclusive applicants (referred to as “Phase I” licensing). However, the Commission discontinued licensing under this approach due to the large volume of applications received, concerns regarding possible speculation in applications, and judicial challenges to the Phase I licensing procedures.

In 1993, Congress passed the Omnibus Budget Reconciliation Act, which conferred authority on the Commission to award licenses by competitive bidding.³³³ Based on its new authority, the Commission sought to develop new licensing rules for 220 MHz spectrum that was not licensed in Phase I. In 1997, the Commission adopted “Phase II” licensing rules, substantially revising Subpart T to provide for licensing based on regional and nationwide geographic areas rather than

³³⁰ 47 C.F.R. Part 90, subpart T.

³³¹ 47 C.F.R. Part 90, subpart W.

³³² The 220-222 MHz band was initially allocated in 1988. *See Amendment of Part 2 of the Commission’s Rules Regarding the Allocation of the 216-225 MHz Band, Report and Order*, 3 FCC Rcd 5287 (1988). Service rules were adopted in 1991. *See Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Report and Order*, 6 FCC Rcd 2356 (1991).

³³³ Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66. Title VI § 6002(b)(2)(a), (b). 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*).

site-specific licenses.³³⁴ The Commission also replaced the previous lottery-based licensing rules with competitive bidding rules by adding Subpart W to Part 90.³³⁵ As part of the conversion to geographic licensing and auctions, the Commission grandfathered all previously granted Phase I licenses. Consequently, the Subpart T rules governing operation by site-based 220 MHz licensees remain in effect as to these grandfathered licensees. In September-October 1998 and June 1999, the Commission conducted Phase II auctions of 220 MHz spectrum pursuant to the rules and procedures set forth in Subpart W.

Purpose

The purpose of the Subparts T and W rules is to facilitate the assignment of spectrum in the 220-222 MHz service, to ensure efficient spectrum use by licensees, and to prevent interference through establishment of technical limits on operation (*e.g.*, siting requirements and limits on transmitter power).

Analysis

Status of Competition

Licensees in the 220 MHz service are permitted to provide voice, data, paging, and fixed communications. Because of the limited amount of spectrum in the 220 MHz band, most licensees offer narrowband services that are not spectrum-intensive. Trunked dispatch has become a particularly prevalent application, particularly as the 800/900 MHz SMR bands are used increasingly for mobile telephony. Since the award of Phase II licenses in 1998 and 1999, many 220 MHz licensees have begun to deploy their networks, and dispatch subscribership in the 220 MHz band grew 35 percent in 1999.³³⁶ Suppliers of 220 MHz equipment anticipate that there will be increased buildout and demand for service in the next several years.³³⁷ Thus, there is potential for the 220 MHz service to be increasingly competitive and to contribute to inter-service CMRS competition.

Advantages

The Subpart T rules, particularly the rules applicable to Phase II geographic licensees, provide a clear and predictable structure for the assignment and use of 220-222 MHz band spectrum, and afford substantial flexibility to licensees to choose the type of service they will provide based on market demand. The Subpart W auction rules promote efficient licensing of 220 MHz spectrum to those entities that value it the most.

Disadvantages

Although the Commission has recently simplified and streamlined the 220 MHz rules in many respects (see below), there continue to be differences among the licensing, technical, and

³³⁴ See *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Third Report and Order*, 12 FCC Rcd 10943 (1997) (220 MHz Third Report and Order).

³³⁵ *Id.*

³³⁶ *Fifth Competition Report.*

³³⁷ *Id.*

operational rules that apply to grandfathered Phase I site-based licenses and those that apply to Phase II geographic area licenses. This multiplicity of rules is potentially burdensome to 220 MHz licensees who have systems comprised of both Phase I and Phase II licenses, which may result in inconsistent regulatory obligations (*e.g.*, buildout requirements) for different portions of their systems.

Recent Efforts

In several recent orders, the Commission has taken steps to reduce regulatory burdens and afford greater flexibility to 220 MHz licensees. For example, the original 220 MHz rules required licensees to provide two-way land mobile service on a primary basis, and allowed use of the band for fixed services or for paging only on an “ancillary” basis. In the *220 MHz Third Report and Order*, the Commission eliminated the ancillary use limitation, thus allowing licensees to provide any or all of these services on a co-primary basis.³³⁸ The Commission has also adopted rules permitting partitioning and disaggregation of 220 MHz licenses, and has eliminated the “40-mile rule” that previously limited the number of Phase I licenses that an individual licensee could hold in a given geographic area.³³⁹ Finally, the Commission recently eliminated mandatory spectrum efficiency standards that had previously been adopted for provision of voice and data over 220 MHz systems that combined contiguous 5 kHz channels.³⁴⁰ The Commission concluded that mandating technical standards was unnecessary because market forces would spur efficient spectrum use, and that retaining mandatory standards could impair rather than encourage technical innovation.³⁴¹

Recommendation

In general, the rules in Subpart T are integral to the basic licensing and spectrum management functions performed by the Commission. Moreover, as noted above, the Commission has significantly revised and streamlined the 220 MHz rules in recent proceedings. Therefore, the staff concludes that substantial modification or repeal of the 220 MHz rules is not necessary at this time. However, the staff recommends that consideration be given to whether certain rules applicable to Phase I licensees continue to be necessary. For example, section 90.737 imposes certain reporting requirements and restrictions on assignments of unconstructed Phase I licenses that were intended to prevent speculation and trafficking in licenses awarded by lottery.³⁴² Now that licensing by lottery has been discontinued, however, these rules may actually impede the transferability of 220 MHz spectrum. The staff therefore recommends that consideration be given to eliminating these rules.

Similarly, as noted elsewhere in this Staff Report, the Commission has consolidated its competitive bidding rules in Part 1, with the goal of having future auctions be conducted in

³³⁸ See *220 MHz Third Report and Order*, 12 FCC Rcd 10943 (1997).

³³⁹ See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Fourth Report and Order*, 12 FCC Rcd 13453 (1997).

³⁴⁰ See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Memorandum Opinion Order on Reconsideration*, 13 FCC Rcd 14569 (1998).

³⁴¹ *Id.*

³⁴² 47 C.F.R. § 90.737.

accordance with Part 1 rules. Therefore, to the extent that future auctions are necessary in the 220 MHz service, they will be governed by Part 1, and the continued presence of separate 220 MHz auction rules in Subpart W appears to be redundant. The staff recommends that consideration be given to eliminating these rules.

PART 95 – PERSONAL RADIO SERVICES, SUBPART F – 218-219 MHZ SERVICE

Description

Part 95³⁴³ contains licensing, technical, and operational rules for the Personal Radio Services, a collection of wireless services that are generally used by individuals for personal communications and to support the radio needs of their activities and interests. These services include the General Mobile Radio Service (Subpart A), the Family Radio Service (Subpart B), the Radio Control (R/C) Radio Service (Subpart C), and the Citizens Band (CB) Radio Service (Subpart D). The Personal Radio Services also include the Low Power Radio Service (Subpart G) and the Wireless Medical Telemetry Service (Subpart H), which are used to support auditory assistance and medical applications.

For purposes of the Biennial Regulatory Review, the analysis of Part 95 in this report focuses on the 218-219 MHz Service (Subpart F), which is unique among the Personal Radio Services in that it may be used for commercial applications, it is licensed on a geographic exclusive-use basis, and its licensure is subject to the Commission's competitive bidding procedures.

Part 95, subpart F was originally created to support the Interactive Video and Data Service (IVDS), a short-distance communications service by which licensees could provide information, products, or services to, and allow interactive responses from, subscribers within the licensee's service area. In 1998, the Commission renamed IVDS the 218-219 MHz Service and revised Subpart F to allow 218-219 MHz licensees greater flexibility to identify and structure services in response to market demand.³⁴⁴ Under the current service rules, both common carrier and private operations are permitted, and both one- and two-way communications are allowed.

The licensing and technical rules for the 218-219 MHz Service are contained in Subpart F, although certain rules that are broadly applicable to all wireless telecommunications services (including the 218-219 MHz Service) have been consolidated in Part 1.³⁴⁵

Purpose

Part 95, subpart F contains the licensing and technical rules for the administration of a radio service in the 218-219 MHz band. The rules are intended to provide licensees with the maximum flexibility to structure their services while protecting over-the-air television reception of TV Channel 13.

Analysis

Status of Competition

The original IVDS service was generally not commercially successful, and little or no competition emerged to use the 218-219 MHz band to provide interactive television applications. Under the revised service rules, 218-219 MHz Service licensees have proposed wireless data

³⁴³ 47 C.F.R. Part 95.

³⁴⁴ *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 19064 (1988).

³⁴⁵ 47 C.F.R. Part 1.

applications such as meter reading and vehicle tracking services. Accordingly, the expectation is that the 218-219 MHz Service could soon provide sources of competition for other wireless services. However, this competition is developing slowly, due in part to (1) the limited permissible use of the service before its recent restructuring; (2) the fact that many 218-219 MHz Service markets are not currently licensed due to payment defaults; and (3) the on-going implementation of the service restructuring.

Advantages

The Part 95, subpart F rules provide licensees with the flexibility to identify and implement services in response to market demand. Licensees no longer have to operate within the context of rules designed to support a specific application – interactive television – and instead enjoy a freer hand in structuring service under their licenses. For example, technical rules that mandated specific antenna height-power ratios have been replaced with general interference protection requirements, and rigid construction benchmarks have been replaced with a “substantial service” requirement that is more suitable to niche services that may develop in the 218-219 MHz Service.

Disadvantages

There are no significant disadvantages to the Subpart F rules at this time, although the rules do impose limited administrative and technical burdens that are inherent to the licensing process and that are necessary for compliance with technical and operational rules. As more licensees begin providing service and we gain more experience in the administration of the 218-219 MHz Service, we will continue to examine whether any of these rules impose unnecessary burdens and costs and could therefore be candidates for additional streamlining.

Recent Efforts

The Commission has made significant changes to its Part 95, subpart F rules in recent years. As noted above, the Commission renamed the service and revised the rules in 1998 to afford more flexibility to licensees over use of the spectrum. The Commission adopted additional sweeping changes to the 218-219 MHz service in September 1999.³⁴⁶ The Wireless Telecommunications Bureau is still implementing these changes, and several petitions for reconsideration remain pending in the docket. In addition, the 218-219 MHz Service has been affected by a number of broadly applicable rulemaking actions, such as the Universal Licensing System (ULS) proceeding that was initiated in conjunction with the 1998 Biennial Regulatory Review.

Recommendation

Due to the recent comprehensive evaluation and restructuring of the 218-219 MHz Service, no changes are recommended to this subpart at this time. The rules that were retained in the 1999 restructuring are an integral part of the basic licensing and spectrum management functions performed by the Commission and should be retained. Although there is presently only limited competition within the 218-219 MHz Service, this fact is primarily attributable to the narrow focus of the former rules that supported interactive television applications and the uncertainty surrounding the restructuring of the service. The staff anticipates the provision of competitive services within the 218-219 MHz Service, and will continue to monitor developments in order to determine whether any additional rule modifications are necessary to foster competition.

³⁴⁶ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

PART 100 – DIRECT BROADCAST SATELLITE SERVICE

Description

Part 100 was issued pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which gives the Federal Communications Commission authority to regulate radio transmissions and to issue licenses for radio stations. Part 100 sets forth rules applicable to the Direct Broadcast Satellite Service (DBS), including public interest obligations, general licensing and application filing requirements, technical and operating requirements, and competitive bidding procedures.

Part 100 is organized into five sub-parts:

- A- General Information
- B- Administrative Procedures
- C- Technical Requirements
- D- Operating Requirements
- E- Competitive Bidding Procedures for DBS

Purpose

Part 100 provides rules under which the International Bureau licenses DBS systems. The rules are designed to promote fair competition in the multi-channel video programming distribution market. Sections of Part 100 also have provisions: (1) to assure protection from impermissible levels of interference; (2) to assure compliance with international regulations; (3) to assure the timely construction and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; (5) to assure compliance with license specifications and conditions, as well as with Commission rules and regulations; and (6) to provide competitive bidding procedures for the provision of DBS services.

Analysis

Status of Competition

The DBS service competes with other multi-channel video program distribution services (*e.g.*, cable). Today there are two major providers of DBS. The service as a whole, and the individual companies are growing rapidly in subscribership and have the capital to offer new digital technologies to consumers. Additionally, the Commission has permitted mergers in the DBS industry that have placed the two DBS licensees in a stronger position to compete with other suppliers of multi-channel video program distribution services (*e.g.*, cable TV systems, which are still today the dominant suppliers of multi-channel video program distribution services). Furthermore, the U.S. has entered into agreements with Mexico and Argentina, which allow those countries to provide Direct-to-Home services (similar to DBS) into the U.S. Finally, we anticipate auctioning additional DBS orbital slots that are allotted to the U.S. which will provide existing or new DBS providers the opportunity to further expand the service to U.S. consumers.

Advantages

Subpart A- General Information: This subpart includes the basis and purpose of this rule subpart. Specifically, it sets forth the Commission's statutory authority to regulate DBS, which fosters

efficient spectrum use. This subpart increases consumer choice and diversity in programming, as well as imposes political advertising rules on DBS providers.

Subpart B- Administrative Procedures: This subpart describes the eligibility criterion for DBS authorizations, including foreign ownership restrictions. It provides clear procedures for filing applications and procedures for evaluating whether applications are complete. This allows for efficient use of resources and ensures compliance with the Commission's rules.

Subpart C—Technical Requirements: This subpart provides technical standards and operating rules to minimize interference among DBS licensees.

Subpart D- Operating Requirements: Section 100.51 describes the Equal Employment Opportunities policy for DBS. This section promotes diversity in employment and creates expanded opportunities to provide service. Section 100.53 sets out geographic service rules for DBS providers. This ensures delivery of service to the public.

Subpart E- Competitive Bidding Procedures for DBS: This subpart describes the mechanism for competitive bidding for satellite DBS service. Competitive bidding awards DBS licenses to those firms that will most efficiently use orbital resources to compete in providing service. Further, it fosters efficient use of spectrum and the development of a competitive DBS market.

Disadvantages

Subpart A- General Information: Section 100.5 (DBS public interest obligations) may increase a licensee's operating administrative and compliance costs. Further, this section may restrict the alternative uses of the resources that must now be set aside for public interest programming.

Subpart B- Administrative Procedures: This subpart could increase a licensee's administrative costs and hamper the introduction of new services. For example, if the milestone schedule for construction and operation of DBS systems is too long, it may result in the deployment of inefficient technologies. In the alternative, if the schedule is too short, it may result in a loss of a license if build out is delayed because of unforeseen technical problems.

Subpart C- Technical Requirements: These standards and operating rules, while preserving the operating environment today, could hamper the introduction of new services and restrict alternative uses of resources in the future.

Subpart D-Operating Requirements: Rules in this section might increase operating costs and limit potential use of resources.

Subpart E- Competitive Bidding Procedures for DBS: Satellite services in the planned frequency bands require international coordination prior to the commencement of operations (*e.g.*, when the plans are modified to accommodate new services). The value of the orbital location resource is uncertain if the international coordination process has not yet been completed.

Recent Efforts

As described in the staff report, the Commission has taken steps to streamline the regulation of DBS. The Commission issued an Notice of Proposed Rulemaking, which seeks comment on its proposals to streamline the DBS rules by integrating the Part 100 DBS service rules into Part 25 (Satellite Communications), by eliminating duplicative rule sections, and by consolidating existing rule sections as appropriate.

Recommendation

Consistent with the outstanding Notice of Proposed Rulemaking, the staff recommends that all of the DBS rules contained in Part 100 be retained. It is anticipated that the entire Part 100 will be incorporated into Part 25 and Part 100 will be eliminated as a result of the outstanding proceeding.

PART 101 – FIXED MICROWAVE SERVICES

Description

Part 101³⁴⁷ contains licensing, technical, and operational rules for the microwave services. Fixed microwave spectrum is primarily used to deliver video, audio, data, and control functions for other specific communications services from one point and/or hub to other points and/or subscribers for distribution. Most Part 101 application processing rules, technical standards, and operational requirements apply to all Part 101 services, but others apply only to specific services,³⁴⁸ or to common carrier services but not private services (or vice versa).³⁴⁹

Part 101 was created in 1996 through consolidation of the rules for the common carrier and private operational fixed (POFS) microwave services contained in Parts 21 and 94.³⁵⁰

Part 101 contains 14 lettered subparts:

- A – General
- B – Applications and Licenses
- C – Technical Standards
- D – Operational Requirements
- E – Miscellaneous Common Carrier Provisions
- F – Developmental Authorizations
- G – 24 GHz Services and Digital Electronic Message Service
- H – Private Operational Fixed Point-to-Point Microwave Service
- I – Common Carrier Fixed Point-to-Point Microwave Service
- J – Local Television Transmission Service
- K – [Reserved]
- L – Local Multipoint Distribution Service
- M – Competitive Bidding Procedures for LMDS
- N – Competitive Bidding Procedures for the 38.6-40.0 GHz Band

Purpose

Part 101 sets forth application processing procedures, technical standards, and operational requirements for the microwave services. The Commission created the Part 101 rules to reduce or eliminate the differences in processing applications between common carriers and private operational fixed microwave service licensees, and to further the regulatory parity among these microwave services.³⁵¹

³⁴⁷ 47 C.F.R. Part 101.

³⁴⁸ *See, e.g.*, 47 C.F.R. §§ 101.21(e), 101.61(c).

³⁴⁹ *See, e.g.*, 47 C.F.R. §§ 101.13, 101.15.

³⁵⁰ *Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Report and Order*, 11 FCC Rcd 13449 (1996) (*Part 101 Order*).

³⁵¹ *Id.*, 11 FCC Rcd at 13452-53.

Analysis

Status of Competition

Because the Part 101 microwave services encompass a variety of private and common carrier applications, and because some services are licensed on a point-to-point basis while others are licensed geographically, the level of competition varies greatly among individual microwave services.

The largest commercial deployment of Part 101 microwave services has occurred in the 24 GHz (DEMS), 28 GHz (LMDS), and 39 GHz bands. The most significant operators in these bands, Teligent, Inc. (Teligent) and WinStar Communications, Inc. (WinStar), are currently concentrating on business customers. These operators are either now offering or are planning in the future to offer subscribers a variety of one- and two-way broadband services, such as video programming distribution, wireless local loop telephony, Internet access and other high speed data transmission services. Thus, if successful, licensees in these bands have the potential to create facilities-based competition in numerous industries, including high-speed broadband services. In other Part 101 services, licensees continue to rely on traditional point-to-point microwave systems to meet their operational support and critical infrastructure needs as opposed to using microwave technologies to directly access customers.

Advantages

The Part 101 rules provide for a unified regulatory approach for the microwave services, and eliminate the differences in processing applications between common carriers and POFS licensees that existed in the former rules. The Part 101 rules were adopted at the same time the microwave industry was developing new collaboration and coordination agreements, and took into consideration the industry's expressed desire to have common carrier and POFS microwave services treated in the same fashion when appropriate.³⁵² Because each of the microwave services share at least some frequencies with other microwave services, and because some frequencies are shared with government users, the rules minimize repetition, reduce the potential for interference, and aid different microwave users in efficient use of the microwave spectrum.

Part 101 also contains competitive bidding rules (Subparts M and N) that, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules are structured to promote opportunity and competition. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum.

Disadvantages

Because the Part 101 rules represent a relatively new consolidation of Parts 21 and 74, licensees and applicants have identified certain rules that are ambiguous or confusing, and certain technical characteristics – including those relating to frequency tolerance, spectrum efficiency, and antenna

³⁵² See *Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, Memorandum Opinion and Order and Notice of Proposed Rule Making, 15 FCC Rcd 3129 (2000) (*Part 101 NPRM*) at ¶ 7.

standards – that could be modified.³⁵³ In addition, some rules could be candidates for further consolidation or streamlining.³⁵⁴ For example, the current rules do not allow shared use among providers and between POFS and common carrier licensees.

Recent Efforts

The Commission is in the midst of a comprehensive re-evaluation of the Part 101 rules.³⁵⁵ The *Part 101 NPRM*, which was released on February 14, 2000, proposes to eliminate rules that are duplicative, outmoded, or otherwise unnecessary; it also seeks comment on specific proposals to “examine the[] rules and procedures and offer their view and explanations of ways to streamline them and to make sure that the regulations conform with the Communications Act of 1934, as amended.”³⁵⁶ The pleading cycle for the *Part 101 NPRM* closed August 4, 2000.³⁵⁷

The Commission has made significant changes to the competitive bidding rules of Part 1, subpart Q. In the *Part 1 Third Report and Order*,³⁵⁸ the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance our auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings, such as those rule makings that created the competitive bidding rules of Subparts M and N.

Recommendation

Because of the ongoing rulemaking embodied in the *Part 101 NPRM*, staff does not recommend that any additional changes be made to the rules within the context of the biennial regulatory review. Indeed, the pending rulemaking engages in the same type of comprehensive examination of our service and technical rules that we are undertaking as part of the larger biennial regulatory review process.

In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in the auctionable services. In addition, the Commission has significantly revised and streamlined the competitive bidding rules in this subpart in several proceedings. Therefore, the staff concludes that significant modification or repeal of the Part 101 competitive bidding rules is not necessary at this time.

³⁵³ *Id.* at ¶ 1.

³⁵⁴ *Id.*

³⁵⁵ *See Id.*

³⁵⁶ *Id.* at ¶ 2.

³⁵⁷ *See* 65 Fed Reg 38333-01 (June 20, 2000).

³⁵⁸ *See* Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998) (*Part 1 Third Report and Order*)).

However, to the extent that service-specific auction rules are duplicative of the consolidated auction rules in Part 1, the staff recommends that they be modified or eliminated.

PART 101, SUBPART G – 24 GHz SERVICE AND DIGITAL ELECTRONIC MESSAGE SERVICE

Description

Part 101 contains licensing, technical, and operational rules for fixed operational microwave services that require operating facilities on land or in certain offshore coastal areas. This report focuses on subpart G, which contains rules for the 24 GHz Service and the Digital Electronic Message Service (DEMS). DEMS systems are common carrier point-to-multipoint microwave networks designed to communicate information between a fixed (nodal) station and a multiple fixed user terminals,³⁵⁹ and this subpart was originally intended to accommodate operation of high-speed, two-way, point-to-multipoint terrestrial microwave transmission systems.³⁶⁰

DEMS was originally licensed for use in the 18.82-18.92 GHz and 19.16-19.26 GHz bands. It was subsequently reallocated to the 24.25-24.45 GHz and 25.05-25.25 GHz bands.³⁶¹

Purpose

The purpose of the Part 101 subpart G rules is to establish the rules for allocation and use of wireless services at 24 GHz (including DEMS), to ensure efficient spectrum use, and to prevent interference.

Analysis

Status of Competition

Under the original DEMS grants in the 1980s, the service was not initially commercially successful.³⁶² In the early 1990s, a small number of companies began acquiring licenses in approximately thirty of the nation's largest markets.³⁶³ The majority of licenses are currently held by Teligent. The 24 GHz spectrum used by DEMS has been identified as a potential competitor in the local exchange telephone market.³⁶⁴ Teligent, which recently completed its initial plan to roll out service in 40 U.S. markets, provides a bundle of broadband fixed wireless telecommunication services to small- and medium-sized businesses.

³⁵⁹ See Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules to Allocate Spectrum at 18 GHz for, and to Establish other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Systems and in Point-to-Point Microwave Radio Systems for the Provision of Digital Electronic Message Services, and for other Common Carrier, Private Radio, and Broadcast Auxiliary Services; and to Establish Rules and Policies for the Private Radio Use of Digital Termination Systems at 10.6 GHz, 54 Rad. Reg. 2d 1091 (1983).

³⁶⁰ See *id.*

³⁶¹ See Amendment to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Notice of Proposed Rulemaking, 14 FCC Rcd 19263, 19267 ¶ 5 (1999) (24 GHz NPRM).

³⁶² *Id.* at 14 FCC Rcd 19265 ¶ 2.

³⁶³ See Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service, Memorandum Opinion and Order, 13 FCC Rcd 15147, 15149 ¶ 6 (1998) (DEMS MO&O).

³⁶⁴ See 24 GHz NPRM, 14 FCC Rcd at 19275 ¶ 20.

Advantages

The current rules provide a clear regulatory framework for the development of competitive fixed wireless services. The existing technical and operational rules are necessary for administration of a radio service at 24 GHz.

Disadvantages

The current subpart G rules were written when the primary use of DEMS was expected to be by businesses requiring internal networks to distribute documents, share data, and hold teleconferences. Accordingly, some of the terminology reflects this initial service concept. Mobile service is not permitted in the 24 GHz band.

Recent Efforts

In 1999, the Commission initiated a rulemaking proceeding (WT Docket No. 99-327) in which it undertook a comprehensive review of use of the 24 GHz band. In a Report and Order adopted July 25, 2000, the Commission revised Part 101 subpart G to comprehensively regulate operations within the 24 GHz band. Under the newly adopted changes, the Commission will license the 24 GHz band in 40 MHz channel pairs, provide 24 GHz band licensees more flexibility in system design, implement a ten-year license term and a "substantial service" requirement at renewal, allow 24 GHz band licensees to partition and/or disaggregate their licenses, and introduce flexible technical standards. Existing DEMS licensees are treated as incumbent licensees subject to the new 24 GHz rules.

Recommendation

In light of the Commission's comprehensive review of its 24 GHz rules in WT Docket No. 99-327, the staff concludes that issues pertaining to Subpart G are being adequately addressed in that proceeding.

**PART 101, SUBPARTS L (LOCAL MULTIPOINT DISTRIBUTION SERVICE (LMDS)) AND M
(COMPETITIVE BIDDING PROCEDURES FOR LMDS)**

Description

Part 101³⁶⁵ contains licensing, technical, and operational rules for the fixed microwave radio services. Local Multipoint Distribution Service (LMDS) systems are fixed point-to-point or point-to-multipoint radio systems that consist of hub and subscriber stations. LMDS licensees may provide a variety of services, including high-speed data and Internet services and multi-channel video programming distribution.³⁶⁶

Subpart L contains licensing, technical, and operational rules for LMDS. In general, the rules in this part: (1) provide eligibility restrictions in this service; (2) define the service area of LMDS licenses; (3) specify the permissible operations for authorized systems; (3) specify the frequencies available to LMDS licensees; (4) establish license terms; (5) establish the minimum construction or coverage requirements for LMDS licensees; and (6) define system operations and permissible communication services.

Subpart M contains competitive bidding rules and procedures for commercial licenses in LMDS. In particular, the rules, on a service-specific basis: (1) provide competitive bidding mechanisms and design options; (2) establish application, disclosure and certification procedures for short- and long-form applications; (3) specify down payment, unjust enrichment, withdrawal and default mechanisms; (4) provide definitions of gross revenues for designated entities and specify the bidding credits for which designated entities qualify; and (5) provide eligibility and technical requirements for partitioning and disaggregation.

Purpose

The purpose of the Part 101 rules is to establish basic ground rules for assignment of spectrum for private operational, common carrier, and LMDS fixed microwave operations that require operating facilities on land or in specified offshore coastal areas. Subpart L contains the basic licensing and operational rules for LMDS. Subpart M helps to ensure access to new telecommunications offerings by ensuring that all customer segments are served, that there is not an excessive concentration of licenses, and that small businesses, rural telephone companies, and businesses owned by women and minorities will have genuine opportunities to participate in the provision of service.

Analysis

Status of Competition

LMDS is a “nascent market.”³⁶⁷ The initial LMDS operator, Cellularvision, no longer provides multi-channel video programming distribution services, and has announced plans to offer high-

³⁶⁵ 47 C.F.R. Part 101.

³⁶⁶ *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Sixth Notice of Proposed Rulemaking*, 14 FCC Rcd 21520 ¶ 32 (1999) (*LMDS 6th NPRM*).

³⁶⁷ *Id.*

speed data access on a portion of its original spectrum. The remaining licenses were issued by auctions held in March 1998 and April and May 1999. Accordingly, LMDS equipment is still subject to limited availability and the majority of licensees are still developing their systems.³⁶⁸ LMDS will most likely compete with wireless and wireline broadband service providers targeting small and medium businesses.³⁶⁹

Advantages

The Subpart L rules provide licensees with broad flexibility to identify and implement services in response to market demand. The Commission recently allowed LMDS eligibility restrictions for incumbent local exchange carrier and cable companies to sunset;³⁷⁰ this development should provide access to additional capital to develop LMDS fully, make administration of LMDS consistent with other competitive services, and aid the development of LMDS in rural markets.³⁷¹

The Subpart M competitive bidding rules, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules of Subpart M were structured to promote opportunity and competition. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum.

Disadvantages

There are no discernable disadvantages to the LMDS rules. The existing rules consist of technical and operational rules that are necessary for administration of the service.

The Subpart M competitive bidding rules have no significant disadvantages. Nevertheless, the rules impose higher transaction costs to auction participants. For example, auction transaction costs are higher than the transaction costs for lotteries. In addition, because the need remains for service-specific notice and comment proceedings prior to the auction event, there is some delay in licensing. These delays, however, are far less than other licensing mechanisms.

Recent Efforts

The June 23, 2000, *LMDS Third R&O* allowed the cross-ownership restriction that prohibited incumbent local exchange carriers and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service

³⁶⁸ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Report and Order and Memorandum Opinion and Order*, FCC 00-223 (June 27, 2000) at App. B (*LMDS 3rd R&O*) for a comprehensive list of LMDS launches and the types of service each carrier is providing.

³⁶⁹ *LMDS 3rd R&O*.

³⁷⁰ *LMDS 3rd R&O*.

³⁷¹ *Id.* at ¶ 33.

areas to expire on June 30. The decision to allow the cross-ownership rule to sunset was based on a thorough analysis of competitive issues and the LMDS market.

The Commission has made significant changes to the competitive bidding rules of Part 1 Subpart Q. In the *Part 1 Third Report and Order*,³⁷² the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance our auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings, such as those rule makings that created the competitive bidding rules of Subpart M.

Recommendation

The staff recommends that no substantive changes be made to this subpart at this time. Certain nonsubstantive revisions could be made to the LMDS rules for the purposes of simplification and to provide clarity to licensees and applicants.³⁷³ The staff also concludes that substantive modification of the Subpart M competitive bidding rules is not necessary at this time. In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission in LMDS. However, the Commission has consolidated its competitive bidding rules in Part 1, with the goal of having future auctions be conducted in accordance with Part 1 rules. Therefore, to the extent that future auctions are necessary in LMDS, the staff recommends that they be governed by Part 1, and that consideration be given to eliminating or phasing out the separate rules in this subpart to the extent they are redundant.

³⁷² See *Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998)) (*Part 1 Third Report and Order*).

³⁷³ For example, Section 101.1001, 47 C.F.R. § 101.1001, should be amended to remove the cross-reference to now-deleted Section 100.1003.